TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 456

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA, PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 18, 1927

CERTIORARI GRANTED NOVEMBER 21, 1927

(32,908)

Presumably from the history + context
jurisdiction did not mean more than
But of the function was the same as
in act of 1815 — in respect of Mallards.
They do it in their way —

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TRANSCRIPT OF RECORD

CAPTION

In the District Court of the United States for the Eastern District of South Carolina.
At Law.

At a District Court of the United States for the Eastern District of South Carolina, begun and held at the Court House in the City of Aiken, S. C., on the fourth Monday of September, being the twenty-seventh day of the same month, in the year of our Lord one thousand nine hundred and twenty-six, and adjourned to Charleston on the second day of October, 1926.

Present: The Honorable Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina.

Among other were the following proceedings:

Federal Intermediate Credit Bank,
of Columbia, Plaintiff,

versus

Chas. S. Mitchell, W. E. Richardson,
Truckers Supply Company, and
South Carolina Agricultural Credit
Company, Defendants.

COMPLAINT

(2) Filed August 31, 1926.

United States of America,
Eastern District of South Carolina.

In the District Court
At Law.

Federal Intermediate Credit Bank,
of Columbia, Plaintiff,

vs.

Chas. S. Mitchell, W. E. Richardson,
Truckers Supply Company, and
South Carolina Agricultural Credit
Company, Defendants.

To the Honorable, The District Court of the United States, for the Eastern District of South Carolina:

The complaint of the Federal Intermediate Credit Bank against the above named defendants, respectfully shows as follows:

FOR A FIRST CAUSE OF ACTION:

1. That the plaintiff, the Federal Intermediate Credit Bank, of Columbia, is now and was at the times hereinafter mentioned a corporation duly organized and existing by and under an Act of the Congress of the United States of America, with its principal place of business in the City of Columbia, State of South Carolina.

2. That the defendants, Chas. S. Mitchell and W. E. Richardson, are now and were at the times hereinafter mentioned, citizens and residents of the State of South Carolina, residing in Beaufort County, in said State, and within the jurisdiction of this Honorable Court.

3. That the defendants, Truckers Supply Company and South Carolina Agricultural Credit Company, are now and were at the times hereinafter mentioned, corporations organized and existing by and under the laws of the State of South Carolina, and citizens and residents of the State of South Carolina, with their principal places of business in the County of Beaufort, State of South Carolina, and within the jurisdiction of this Honorable Court.

4. That the cause of action herein set forth is a suit of a civil nature at law between the Federal Intermediate Credit Bank, a corporation incorporated by an Act of

Congress of the United States of America, the entire capital stock of which is owned by the Government of the United States, and citizens and residents of the State of South Carolina, within the jurisdiction of this Honor-
(3) able Court, wherein the matter in dispute, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

5. That heretofore, to-wit, on or about the 11th day of November, 1925, the defendant, Chas. S. Mitchell, for value received, made, executed and delivered unto the defendant South Carolina Agricultural Credit Company, his certain promissory note in writing, of which the following is a copy:

"$6000.00 Beaufort, S. C., November 11, 1925.

Eight months after date I promise to pay to the order of the SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY Six Thousand and no/100 . . . Dollars. For value received, payable at the South Carolina Agricultural Credit Company, Beaufort, S. C., with discount before and interest after maturity at the rate of 6½ per cent per annum until the whole of said debt is paid. And the maker, endorser, surety, or guarantor of this note severally waives demand, presentment, protest and notice of protest.

In case of default each of us, whether maker, endorser, surety, or guarantor of this note hereby agrees to pay ten per cent attorney's fees and all costs and expenses that may be incurred in securing the rights of said South Carolina Agricultural Credit Company and collecting any amount or balance which may remain unpaid under this instrument.

(signed) CHAS. S. MITCHELL."

Endorsed across the back:
"W. E. Richardson
Truckers Supply Co.
By E. B. Mitchell, Pres.
$2.40 revenue stamps affixed.
South Carolina Agricultural Credit Co.
Beulah B. Harvey,
Treasurer."

6. That the defendant, W. E. Richardson, for value, endorsed his name across the back of said note.

7. That upon the making and execution of the said note by the defendant, Chas. S. Mitchell, the same was endorsed by the defendant, Truckers Supply Company; and being so made, executed and endorsed, was thereafter and before maturity delivered to the said South Carolina Agricultural Credit Company.

8. That the said note was duly endorsed by the said South Carolina Agricultural Credit Company and delivered to plaintiff, for value received; and the plaintiff herein, the Federal Intermediate Credit Bank, of Columbia, is now the owner and holder of said note, having acquired same for value before maturity.

9. That no part of the indebtedness evidenced by the said note has been paid, and there is now due and owing thereon by the defendants to the plaintiff, the entire principal sum of Six Thousand Dollars, with interest thereon from the 11th day of July, 1926, at the rate of six and one-half per cent per annum, and the further sum of ten per cent of the amount of principal and interest due as attorney's fees, no part of which has been paid by discount or otherwise although the same is past due and payment thereof has been demanded.

(4) FOR A SECOND CAUSE OF ACTION:

1. That the plaintiff makes the allegations of Paragraphs 1, 2 and 3, of its first cause of action herein, a part of this, its second cause of action, as though the same were here fully repeated and set forth.

2. That the cause of action herein set forth is a suit of a civil nature at law between the Federal Intermediate Credit Bank, a corporation incorporated by an Act of the Congress of the United States of America, the entire capital stock of which is owned by the Government of the United States, and citizens and residents of the State of South Carolina, within the jurisdiction of this Honorable Court, wherein the matter in dispute, as set forth in this cause of action, together with that set forth in

the first cause of action, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

3. That heretofore, to-wit, on or about the 27th day of January, 1926, the defendant, Chas. S. Mitchell, for value received, made, executed and delivered unto the defendant South Carolina Agricultural Credit Company, his certain promissory note in writing, of which the following is a copy:

"$3000.00 Beaufort, S. C., 27th day of January, 1926.

Seven months after date, the undersigned promises to pay to the order of the South Carolina Agricultural Credit Company, Three Thousand and no/100 Dollars for value received, rediscountable by and payable at the Federal Intermediate Credit Bank of Columbia, in Columbia, S. C., with interest from maturity at the rate of eight per centum per annum, with all costs of collection including ten (10%) per centum attorney's fees.

And the undersigned, each for himself, whether maker, or endorser, waives demand and protest, and notice of demand, protest and nonpayment.

Witness my hand and seal the day and year above written.

CHAS. S. MITCHELL."

Endorsed across the back:
W. E. Richardson,
Truckers Supply Co.
By E. B. Mitchell,
Pres.
South Carolina Agricultural Credit Co.
Beulah B. Harvey,
'Treasurer'.

$1.20 revenue stamps affixed.

4. That before maturity of the said note, the defendant, W. E. Richardson, for value, endorsed his name across the back thereof.

5. That upon the making and execution of the said note by the defendant, Chas. S. Mitchell, the same was

endorsed by the defendant, Truckers Supply Company; and being so made, executed and endorsed, was thereafter and before maturity delivered to the said South Carolina Agricultural Credit Company.

6. That the said note was duly endorsed by the said
(5) South Carolina Agricultural Credit Company and delivered to plaintiff, for value received; and the plaintiff herein, Federal Intermediate Credit Bank, of Columbia, is now the owner and holder of said note, having acquired same for value before maturity.

7. That no part of the indebtedness evidenced by the said note has been paid, and there is now due and owing thereon by the defendants to the plaintiff, the entire principal sum of Three Thousand Dollars, with interest thereon from the 27th day of August, 1926, at the rate of eight per cent per annum, and the further sum of ten per cent of the amount of principal and interest due as attorney's fees, no part of which has been paid by discount or otherwise although the same is past due and payment thereof has been demanded.

WHEREFORE, Plaintiff demands judgment against the defendants for the sum of Nine Thousand Dollars, with interest on the sum of Six Thousand Dollars from the 11th day of July, 1926, at the rate of six and one-half per cent per annum, and interest on the sum of Three Thousand Dollars from the 27th day of August, 1926, at the rate of eight per cent per annum, and ten per cent of the total amount of principal and interest due as attorney's fees, and for the costs and disbursements of this action.

RANDOLPH MURDAUGH,
W. BRANTLEY HARVEY,
Plaintiff's Attorneys.

State of South Carolina,
(6) County of Richland.

Personally appeared before me D. T. Gerow, who being duly sworn, says:

That he is the Treasurer of the Federal Intermediate

Credit Bank, of Columbia; that he has read the foregoing complaint and that the same is true of his own knowledge; that the reason this verification is made by deponent is that the plaintiff is a corporation and deponent is an officer thereof, to-wit, its Treasurer.

D. T. GEROW.

Sworn to before me this 28th day of August, 1926.

JOHN T. SOX (L. S.)
Notary Public for South Carolina.

RETURN ON SERVICE OF WRIT

Filed Sep. 3, 1926.

I hereby certify and return that I served the annexed Summons and Complaint, on the therein named W. E. Richardson and So. Ca. Agricultural Credit Company, by handing to and leaving a true and correct copy thereof with W. E. Richardson and H. H. Lake, Pres. of So. Ca. Agricultural Credit Company, personally, at Beaufort in said District on the 1st day of September, 1926; and on the therein named Chas. B. Mitchell by handing to and leaving a true and correct copy thereof with Chas. S. Mitchell, personally, at Dale, in said District on the 2nd day of September, 1926.

SAML. J. LEAPHART,
U. S. Marshal.
By M. P. TOLBERT, Deputy.

ANSWER OF CHAS. S. MITCHELL

(7) Filed Sept. 20, 1926.

To the Honorable the District Court of the United States for the Eastern District of South Carolina:

Chas. S. Mitchell, one of the defendants above named, answering the complaint of the plaintiff, alleges:

AS TO THE FIRST CAUSE OF ACTION:

1. Answering the allegations of Paragraph 1 of the First Cause of Action, he admits the same, and as further identification of the Act of Congress therein mentioned, respectfully refers the Court to the Act of March 4, 1923 entitled: "An act to provide additional credit facilities for the agricultural and livestock industries of the United States; to amend the Federal Farm Loan Act; to amend the Federal Reserve Act; and for other purposes," and commonly known as the Federal Intermediate Credit Bank Amendment to the Federal Farm Loan Act (U. S. Compiled Statutes, 1925, Supplement, Section 9835¼, page 801).

2. Answering the allegations of Paragraphs 2 and 3 of the First Cause of Action, he admits the same.

3. Answering the allegations of Paragraph 4 of the First Cause of Action, he admits the civil nature at law of this action. He admits the identity of the plaintiff, and he admits that the matter in dispute exceeds the sum of Three Thousand ($3 000.00) Dollars, exclusive of interest and costs. He denies all other allegations of the said paragraph, and specifically denies the jurisdiction of this Honorable Court.

4. Answering the allegations of Paragraph 5 of the (8) First Cause of Action, he admits that a note approximately of the tenor set out in the said paragraph was executed by this defendant, but the said note is not now in the possession of this defendant, and he has no means of determining the exact accuracy of the wording used in said note, and therefore makes formal denial of the terms until the said note can be produced. This defendant has no knowledge or information sufficient to form a belief as to the endorsements on the back of said note and therefore denies the same. All other allegations of the said paragraph not specifically admitted are denied.

5. Answering the allegations of Paragraphs 6, 7 and 8 of the First Cause of Action, this defendant has no knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

6. This defendant denies the allegations of Paragraph 9 of the First Cause of Action.

AS TO THE SECOND CAUSE OF ACTION:

7. Answering the allegations of Paragraph 1 of the Second Cause of Action, this defendant makes the same answers thereto as are made to Paragraphs 1, 2 and 3 of the First Cause of Action.

8. Answering the allegations of Paragraph 2 of the Second Cause of Action, he admits the civil nature at law of this action. He admits the identity of the plaintiff, and he admits that the matter in dispute exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs. He denies all other allegations of the said paragraph, and specifically denies the jurisdiction of this Honorable Court.

9. Answering the allegations of Paragraph 3 of the Second Cause of Action, he admits that a note approximately of the tenor set out in the said paragraph was executed by this defendant, but the said note is not now in the possession of this defendant, and he has no means of determining the exact accuracy of the wording used in said note, and therefore makes formal denial of the terms until the said note can be produced. This defendant has no knowledge or information sufficient to form a belief as to the endorsements on the back of said note and therefore denies the same. All other allegations of the said paragraph not specifically admitted are denied.

10. Answering the allegations of Paragraphs 4, 5 and (9) 6 of the Second Cause of Action, this defendant has no knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

11. Answering the allegations of Paragraph 7 of the Second Cause of Action, this defendant denies the same.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A SECOND SEPARATE AND COMPLETE DEFENSE, THIS DEFENDANT ALLEGES:

12. That this Honorable Court is without jurisdiction of the matters and things set forth in the complaint of the plaintiff in that there are no allegations in the said complaint, and there are no facts extent, bringing this proceeding within the grant of the jurisdiction of this Court, or sufficient to overcome the presumption against the jurisdiction of his Court.

FURTHER ANSWERING THE SAID COMPLAINT AND AS A THIRD SEPARATE AND COMPLETE DEFENSE, THIS DEFENDANT ALLEGES:

13. That this defendant is now and was at all times hereinafter mentioned engaged in business as a farmer in the County of Beaufort, State of South Carolina, and as such engaged in extensive operations as a truck grower.

14. That the plaintiff herein during the year 1925 and prior thereto engaged inter alia in the business of lending money for interest to farmers in the County of Beaufort, S. C.

15. That in its operations of lending money as aforesaid, the plaintiff acted entirely through the medium of an organization known as the South Carolina Agricultural Credit Company, the affairs of which were actually and actively managed by W. E. Richardson, and the said Richardson actively solicited the farmers of Beaufort County to borrow money from the plaintiff, representing to this defendant and other persons that money could be borrowed from the plaintiff at advantageous rates of interest, and by argument and persuasion inducing this defendant and other persons to borrow money as aforesaid.

16. That the said Richardson, acting for and in behalf of the plaintiff, represented to this defendant that for the purpose of obtaining loans from the plaintiff at low rates of interest, it was required by the plaintiff that the loans from the plaintiff to farmers be handled through (10) the South Carolina Agricultural Company, and that all produce of the borrower should be sold through the Beaufort Truck Growers Co-operative Association,

with such control of the proceeds as would secure the plaintiff.

17. That on or about the 11th day of November, 1925, this defendant applied to the said W. E. Richardson for a loan from the Federal Intermediate Credit Bank, the plaintiff herein, through the South Carolina Agricultural Credit Company, and said W. E. Richardson had this defendant to sign the note for Six Thousand ($6,000.00) Dollars, dated November 11th, 1925, set out in the Fifth Paragraph of the first cause of action in the complaint herein, and also at the same time had this defendant to sign an agricultural crop mortgage to secure said note, copy of which crop mortgage is hereto attached, marked "Exhibit A", and made a part of this answer, and to which the attention of this Honorable Court is craved, said note and mortgage constituting one contract and agreement, and designated by the said W. E. Richardson as an application for a loan from the plaintiff in this action, and this defendant was later informed that his loan had gone through.

18. That on or about the 27th day of January, 1926, this defendant applied to the said W. E. Richardson for a second loan from the said Federal Intermediate Credit Bank of Columbia, through the said South Carolina Agricultural Credit Company, for Three Thousand ($3,000.00) Dollars and signed the note and crop mortgage dated January 27th, 1926, copy of which is hereto attached and marked "Exhibit B", and made a part of this answer, and to which the attention of this Honorable Court is craved, a portion of said note being set out in Paragraph 3 of the second cause of action in said complaint.

19. That at the time of signing each of the above mentioned notes and mortgages this defendant was required by the said Richardson also to sign a written agreement with said South Carolina Agricultural Credit Company, whereby this defendant was bound to have all returns from sales of vegetables made on the lands covered by said mortgages turned over to the said South Carolina Agricultural Credit Company or the Federal Intermediate Credit Bank of Columbia or to the holder of the

notes, to be applied to the satisfaction of said notes, and the proceeds of the said crops were assigned to the said South Carolina Agricultural Credit Company.

20. That in these transactions the said Richardson (11) managed, controlled, or dominated the South Carolina Agricultural Credit Company, and in all of these transactions the said W. E. Richardson and the South Carolina Agricultural Credit Company individually and collectively were acting as agents for the plaintiff corporation.

21. That the money evidenced by the said notes set out in the complaint was not paid over to this defendant at the time of the negotiation of said notes, but was retained either by the plaintiff or by one of its agents and was advanced to this defendant from time to time upon application to the said Richardson or to persons in his office in the Beaufort Bank, and acting under his directions, and this defendant has never received the full amount evidenced by the notes.

22. That the effect of the requirements placed upon this defendant by the plaintiff and by its agents acting in its behalf as aforesaid, was to secure from the defendant his personal obligation for Nine Thousand ($9,000.00) Dollars with interest, no such sum of money having been advanced to this defendant, and to require this defendant to mortgage all crops grown by him and also to require this defendant to assign the proceeds of said crops for the benefit of the plaintiff, and also to require this defendant to place the marketing of said crops under an agency designated by the plaintiff, so that the plaintiff by this arrangement maintained a firm grip and absolute control upon the operations of this defendant in financing the growing of his crops, in marketing his crops, and in disposing of the proceeds.

23. That as a result of his farming operations this defendant during the season of 1925-1926 raised crops on lands described in the said mortgages, which crops were marketed through the Beaufort Truck Growers Co-operative Association as required by the plaintiff, and the returns from the sale of said crops amounted to more than Eighteen Thousand ($18,000.00) Dollars, but, by reason

of the drastic and stringent requirements placed upon this defendant by the plaintiff, this defendant was unable to obtain any of the said proceeds from the Beaufort Truck Growers Co-operative Association, and this defendant is informed and believes that the said proceeds were paid over by the Beaufort. Truck Growers Co-operative Association to the plaintiff or to its agent, South Carolina Agricultural Credit Company, or to its (12) agent, W. E. Richardson, or were otherwise disposed of as directed by the plaintiff or its agent.

24. That the said proceeds of the sale of defendant's crops, amounting to more than Eighteen Thousand Dollars, have been paid to or for the benefit of the plaintiff herein, and the said sum more than paid such advances as were made by or in behalf of the plaintiff to this defendant from time to time, either evidenced by the said notes or otherwise.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FOURTH SEPARATE AND COMPLETE DEFENSE THERETO, THIS DEFENDANT ALLEGES:

25. That the notes set out in the complaint of the plaintiff were given in accord with a well established system under which the plaintiff was engaged in advancing money for interest to the farmers of Beaufort County, and under the said system as was well known to the plaintiff at the time of the taking of the said notes, the said notes were secured by crop mortgages and also by a collateral agreement under which the maker of said notes was required to market the produce of his farm through a certain agency and authorized the said agency to pay over the proceeds of the said crops to the holder of the notes. That the plaintiff in taking the said notes was fully aware of the collateral undertakings of this defendant as absolutely and completely as if the said collateral undertakings had been embodied in the said notes as a part thereof.

26. That the collateral undertakings hereinabove referred to were required by the plaintiff as security for the notes and as a condition of its acceptance of the said

notes and prescribed a method of crop finance and crop marketing that placed this defendant and other persons borrowing from the plaintiff under the said system at the mercy of the agencies designated by the plaintiff and that designated a fund out of which the notes were to be paid and that imposed upon the holder of the notes certain reciprocal obligations to the note maker to see that the fund was properly applied.

27. That because of the form of the said notes and the terms of the collateral undertakings required by the plaintiff as aforesaid, and known by the plaintiff to exist at the time of the taking of said notes, the said notes were non-negotiable and the plaintiff took the same fully (13) charged with defenses existing thereon between the original nominal parties thereto.

28. That at the time the said notes were received by the plaintiff this defendant had failed to receive the full consideration for the said notes, and there was a failure of consideration, total or partial, between the parties thereto at that time.

29. That subsequently this defendant drew drafts against the South Carolina Agricultural Credit Company and delivered farm produce to the Beaufort Truck Growers Co-operative Association that sold the same, and, as this defendant is informed and believes, paid the proceeds thereof to the said South Carolina Agricultural Credit Company or at its behest to the plaintiff herein, and the total amount so paid was in excess of all sums advanced to the plaintiff by the said South Carolina Agricultural Credit Company on the notes or otherwise, and as a result of the said transactions the said notes have been fully paid and discharged.

WHEREFORE, This defendant prays that he may be dismissed hence with his costs in this case.

W. J. THOMAS,
BUIST & BUIST,
Attorneys for Defendant,
Chas. S. Mitchell.

State of South Carolina,
County of Beaufort.

Personally appeared before me Chas. S. Mitchell, who, being duly sworn, deposes and says that he is one of the defendants in the above case, that he has read the foregoing Answer and that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those he believes it to be true.

CHAS. S. MITCHELL (L. S.)

Sworn to before me this 16th day of September, 1926.

LeROY BANKS ATTAWAY.
(14) Notary Public for S. C.

EXHIBIT "A"—CROP MORTGAGE

State of South Carolina,
County of Beaufort.

TO ALL WHOM THESE PRESENTS MAY CONCERN: I, C. S. Mitchell, of said County and State, send greeting:

Whereas, I, the said C. S. Mitchell, in order to plant and harvest the crops hereinafter described and mortgaged, have applied to the South Carolina Agricultural Credit Company, a corporation duly created and existing under and by virtue of the laws of the State of South Carolina, to assist me by advancing money and supplies to carry on my planting and harvesting operations for the year 1925-1926 in an amount not to exceed Six Thousand and No/100 Dollars; and,

Whereas, the South Carolina Agricultural Credit Company has agreed so to do in consideration of the execution by me of this mortgage and the carrying out of all of its items, provisions and conditions as contained herein; and,

Whereas, I, the said C. S. Mitchell, am indebted to the said South Carolina Agricultural Credit Company in the sum of Six Thousand and no/100 Dollars, and have given my note therefor as follows, to-wit:

One note dated the 11th day of November, 1925, for Six Thousand ($6000.00) Dollars, payable *of* the 11th day of July, 1926, with interest thereon after maturity at the rate of 6½ per cent. per annum.

NOW, THEREFORE, KNOW ALL MEN: That I, the said C. S. Mitchell, in consideration of the premises and also in consideration of the sum of $5.00 to me in hand paid at and before the execution of these presents (receipt whereof is hereby acknowledged), in order to secure the payment of the said note and to secure the payment of all such further sums of money as the mortgagor may owe unto the mortgagee, its successors and assigns, for any and all advances in cash and supplies made to the mortgagor from time to time to enable me to make and harvest crops during the year 1925-1926; and in order (15) to secure any and all indebtedness now due or which may hereafter become due to the mortgagee, its successors and assigns by the said mortgagor, the said mortgagor *have* granted, bargained and sold and by these presents do grant, bargain and sell and in plain and open market deliver unto the mortgagee, its successors and assigns, the following goods and chattels, to-wit:

All the crops of every kind and description now planted or to be planted during the year 1925-1926 on all that tract of land in the County and State aforesaid, known as C. S. Mitchell, containing 82 acres, more or less, and bounded:

North by lands of Lucy Blake and others,
East by the estate of Frazier,
South by land of R. Carr and waters of Adams Creek,
and West by land of Dan Simmons and estate of Tom Reed.

The crops planted or to be planted on the above described tract of land being 5 acres English peas, 60 acres potatoes, 50 acres of corn, 50 acres of Velvet Beans, Soy Beans and Cow Peas.

And I hereby represent, warrant and guarantee that there are not now any liens of any nature whatsoever against any of the said crops or other property mentioned above and herein mortgaged.

Together with all and singular the rights, members, hereditaments and appurtenances incident to the said property.

To have and to hold all and singular the said crop or crops and goods and chattels unto the said South Carolina Agricultural Credit Company, its successors and assigns, forever. The mortgagor hereby expressly declare that it is ..... intention and purpose that the crop or crops planted and growing and to be planted, grown, raised, made or harvested upon the above described land or lands is and shall become and remain subject to the lien of this mortgage until the same shall have been harvested and applied to the payment of the amount due and owing unto and upon this mortgage.

Provided, nevertheless, that if the said mortgagor shall pay to the mortgagee, its successors or assigns, the said (16) sum of money and indebtedness hereinbefore mentioned, with interest thereon, according to the true intent and meaning of these presents, then this mortgage shall be void; otherwise to remain in full force and virtue. But should any proceeding be necessary to collect the said indebtedness, or any part thereof, or should this mortgage be put into the hands of an attorney for collection, a conclusion of 10% upon the amount due shall be added to cover attorney's fees for collecting the same, and in the event of the non-payment of any part of the said indebtedness when due, then the whole amount shall become immediately due and payable.

AND PROVIDED FURTHER: That said mortgagor shall retain possession of said crop or crops, goods and chattels until default be made in the payment of said note or notes; but if the same be not paid when due, or if before said note become due the said mortgagor shall attempt to make way with or remove the said crop or crops, goods or chattels, or any part or parcel thereof, from the place where they now are, or from the premises above described, or should the mortgagee at any time deem its security unsafe or in danger, then and in either

event the said mortgagee or its agents, successors or assigns, shall have the right, without suit or process of law, to enter such place or places where the said crop is or shall be then located, and to take possession of the said crop or crops (whether growing or harvested), goods and chattels, wherever they may be found, and may sell the same, or so much thereof as may be necessary, at public auction to the highest bidder for cash, after three days' advertisement at such place in the aforesaid County as may be most convenient for the mortgagee, with the right at such sale to purchase the same or any part thereof, and shall apply the proceeds of said sale to the discharge of said debt, costs and expenses, including 10% attorney's fees for collection and a reasonable attorney's fee if any litigation be had concerning said debt or the property hereby mortgages, returning the overplus, if any to the said mortgagor.

Witness my Hand and Seal this the 11th day of No-
(17) vember, One thousand, nine hundred and twenty-five.

CHAS. S. MITCHELL, (L. S.)

Signed, sealed and delivered in the presence of

O. H. DAVIS
W. P. JAY.

State of South Carolina,
County of Beaufort.

Personally appeared before me O. H. Davis and made oath that he was present and saw the above named C. S. Mitchell sign, seal, and, as his act and deed, deliver the above written instrument; and that he with W. P. Jay witnessed the execution thereof.

O. H. DAVIS.

Sworn to before me this 11th day of November, 1925.

W. P. JAY (L. S.)
Notary Public for South Carolina.

(Seal)

EXHIBIT "B"—CROP NOTE

FEDERAL INTERMEDIATE CREDIT BANK OF
(18) COLUMBIA

CROP PRODUCTION NOTE

$3,000.00 Beaufort, S. C., 27th day of January, 1926.

Seven months after date the undersigned promises to pay to the order of the South Carolina Agricultural Credit Company Three Thousand and No/100 Dollars, for value received, rediscountable by and payable at the Federal Intermediate Credit Bank of Columbia, S. C., with interest from maturity at the rate of eight (8%) per centum per annum, with all costs of collection, including ten (10%) per centum attorney's fees, and the undersigned each for himself, whether maker or endorser, waives demand and protest and notice of demand, protest and non-payment.

Witness my hand and seal the day and year above written.

CHAS. H. MITCHELL (L. S.)

Address:

.....

MORTGAGE OF CROPS AND OTHER PERSONAL PROPERTY

State of South Carolina,
County of Beaufort.

Whereas, I, C. S. Mitchell, of said County and State, hereinafter called the Mortgagor, whether one or more, am indebted to South Carolina Agricultural Credit Company, hereinafter called the Mortgagee, in the sum of Three Thousand ($3,000.00) Dollars, for which the Mortgagor has executed and delivered to the Mortgagee the above promissory note.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) in hand paid by the mortgagee to the Mortgagor, as well as for the purpose of securing the payment of the said note and the advances made by the Mortgagee to the Mortgagor, together with any renewal or extension thereof, in whatever form the same may be, and any other indebtedness now due or to become due, or hereafter to be contracted, the Mortgagor hereby grants, bargains and sells unto the Mortgagee, its successors and assigns, all of the crops planted by the Mortgagor during the year of the date hereof, grown on the following (19) described lands:

Lying and being in Beaufort County South Carolina, to-wit:

(Description must definitely identify land)

known as C. S. Mitchell's place, containing eighty-two acres, more or less, and bounded as follows: North by lands of Lucy Blake and others; East by Estate of Frazier; South by lands of R. Carr and waters of Adams Creek, and West by lands of Dan Simmons and Estate of Tom Reed.

Also 15 acres of land bounded as follows: North by lands of Doctor and others; East by Estate of Esau Barnes; South by lands of E. B. Mitchell, and west by lands of John Austin.

All the crops of Peas, Potatoes, Tomatoes, Corn and Soy Beans planted or to be planted on the above described lands as hereinafter specified.

Said crops consisting of approximately .... acres in Cotton, 50 acres in Corn, 5 acres in Peas, ... acres in Peanuts, ... acres in Sugar Cane, ... acres in Beans, 50 acres in Hay, ... acres in Melons, ... acres in Tobacco, 65 acres in Irish Potatoes, ... acres in Sweet Potatoes, ... acres in Cabbage, ... acres in Lettuce, 20 acres in Tomatoes, ... acres in Peaches, ... acres in Cucumbers, ... acres in Peppers .....

In order to further secure the payment of the said note of and advances to the Mortgagor by the Mortgagee and/or any renewal or extension thereof in whatever form the same may be, as well as all other indebtedness now due or to become due, or hereafter to be contracted,

the Mortgagor grants, bargains and sells to the Mortgagor, its successors and assigns, the following property located and being on the farm owned and/or occupied by the Mortgagor hereinbefore described, to-wit:

(Note: Description must be definite.)

Mules of the following description: .....
Horses of the following description: .....
Cows of the following description: .....
Other personal property: .....

TO HAVE AND TO HOLD all and singular the said crops, goods and chattels unto the Mortgagee, its suc-
(2.) cessors and assigns forever.

The Mortgagor agrees to plant during the year named and to *cultivate* and harvest said crops with ordinary care and diligence, and in the event of failure to do so, the Mortgagee and/or its assignee is hereby authorized and empowered to enter in and upon said lands for the purpose of cultivating, gathering and harvesting any or all of the said crops whenever in its discretion its interest may so require, and any expense incurred in so cultivating, gathering and harvesting said crops shall be charged to the Mortgagor and become secured hereby, and such failure to plant, cultivate and/or harvest said crops as aforesaid shall at the option of the Mortgagee render the whole amount of the indebtedness secured hereby immediately due and payable, and the Mortgagee may proceed at once to take possession of said property and to sell the same as hereinafter provided.

The Mortgagor further agrees in case of serious injury to or loss by death or otherwise of any of said property to report the same immediately to the Mortgagee, and in the event of failure to do so, the Mortgagee shall have the right at its option to declare the entire indebtedness secure hereby due and payable at once, immediately to take possession of said property and to sell the same as hereinafter provided.

PROVIDED, NEVERTHELESS, That if the Mortgagor shall pay to the Mortgagee the indebtedness hereinbefore mentioned and secured hereby when due, then this mortgage will be void; otherwise it shall remain in full force and effect.

AND PROVIDED FURTHER: That the Mortgagor may retain possession of said crops, goods and chattels until default be made in the payment of said note or in the performance of any of the terms, conditions and agreements hereof; but if the same is not paid when due, or if before said note is due the mortgagor shall attempt to make way with or remove any or all of the said crops, goods and chattels from the place where they now are, or from the premises above described, or shall neglect to take care of and maintain the same in good condition, or should the Mortgagee at any time deem its security unsafe or in danger or in case of the violation or breach of any of the terms, conditions and agreements of this mort-
(21) gage, then and in such event the Mortgagee and/or its agents shall have the right without suit or process to take possession of any or all of said crops, goods and chattels, wherever they may be found, to sell the same, or so much as may be necessary, at public auction for cash, after giving notice thereof by advertisement for three days at such places in the said County as may be most convenient to the Mortgagee, to apply the proceeds of such sale to the discharge of said indebtedness and accrued interest, together with any expenses and attorney's fees incurred by the Mortgagee as provided for herein, and to pay to the Mortgagor any surplus that may remain.

The Mortgagor hereby warrants the title to the crops and other personal property described herein against the lawful claim of all persons whomsoever, and covenants that the same is free and clear of all rights and encumbrances of every nature and kind whatsoever.

IN WITNESS WHEREOF, I do hereunto set my hand and seal this the 27th day of January, A. D. 1926.

CHAS. S. MITCHELL (L. S.)

Signed, sealed and delivered
in the presence of:

E. J. RAWL
W. P. JAY

WAIVER OF LANDLORD'S LIENS

The State of South Carolina,
County of .....

In consideration of the advances of money represented by the Note on the reverse side hereof and secured by above mortgage as and for the purposes therein set forth, the undersigned owner of the premises therein described does hereby waive the liens of the landlord for rent and supplies under the laws of South Carolina in favor of said note and mortgage and the indebtedness secured thereby, to the end that the said note and mortgage shall have priority over the landlord's said liens for rent and for supplies until the indebtedness secured thereby has been paid in full, including accrued interest, attorney's
(22) fees and costs of collection.

WITNESS ..... hand and seal this ..... day of ....., 192...

.....(L. S.)

State of South Carolina,
County of Beaufort.

Personally appeared before me E. J. Rawl, and made oath that ..... saw the within named Chas. S. Mitchell sign, seal, and as his act and deed, deliver the within written instrument; and that he subscribed his name as a witness thereto.

W. J. RAWL.

Sworn to before me this 27th day of January A. D. 1926.

W. P. JAY (L. S.)
(Seal) Notary Public S. C.

NOTICE OF MOTION TO DISMISS FOR WANT OF JURISDICTION

(23) Filed Sept. 20, 1926.

To Messrs. Randolph Murdaugh and W. Brantley Harvey, Plaintiff's Attorneys:

Please take notice that four (4) days after the service hereof, or as soon thereafter as counsel can be heard, we shall move before his Honor, the District Judge, at his Chambers at Charleston, S. C., upon the pleadings herein to dismiss the Complaint for want of jurisdiction.

W. J. THOMAS,
BUIST & BUIST,
Attorneys for Defendant,
Chas. S. Mitchell.

Dated Sept. 16, 1926.

ACCEPTANCE OF SERVICE

Due and legal service of a copy of the within Answer and Notice of Chas. S. Mitchell, is admitted this 17th day of Sept., 1926.

W. BRANTLEY HARVEY,
RANDOLPH MURDAUGH,
Plaintiff's Attorneys.

OPINION

(24) Filed October 9, 1926.

The plaintiff, a Federal Intermediate Credit Bank, is a corporation organized under an Act of Congress, with its principal place of business in the City of Columbia, S. C. The defendants are all citizens of South Carolina. The action is to recover upon certain notes and the matter in dispute, exclusive of interest and costs, exceeds the sum of $3000.00. The defendant, Chas. S. Mitchell, has moved to dismiss the action on the ground that this Court has no jurisdiction.

The plaintiff was organized under an Act of Congress of March 4, 1923, Ch. 252, 42 Stats. L., 1454. By Sec. 205 of that Act, it is provided that all of the Stock of Federal Intermediate Credit Banks shall be subscribed, held and paid by the Government of the United States, and it is alleged in the complaint that the entire capital stock of the plaintiff is owned by the Government.

Sec. 24 of the Judicial Code provides that the District Court shall have original jurisdiction of all suits of a civil nature where the matter in controversy exceeds $3000.00, and arises under the Constitution and laws of the United States.

It is well settled and is conceded by the defendant that an action by a corporation created by an Act of Congress is one arising under the laws of the United States.

American Banking & Trust Co. v. Federal Bank, 256 U. S. 356.
Matter of Dunn, 212 U. S. 374.
Pacific R. R. Removal Case, 115 U. S. 1.
Osborn v. Bank of U. S., 9 Wheat. 738.

It is clear therefore that unless there is an Act of Congress which excludes jurisdiction, the Court would have (25) Jurisdiction of this cause. The defendant contends that jurisdiction is excluded by Sec. 201, Subd. (c), of the Act of Congress authorizing the organization of Federal Intermediate Banks, which is as follows:

"(c) Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, *and for purposes of jurisdiction shall be deemed a citizen of the State where it is located.*" (Italics mine).

Act of Congress of March 4, 1923, Ch. 252, 42 Stats. L. 1454.

The plaintiff claims that inasmuch as more than one-half of its capital stock is owned by the Government, the section referred to is superceded or impliedly repealed by Sec. 12 of the Act of Congress of February 13, 1925, Ch. 229, 43 Stats. L. 941, and contends that the jurisdiction can be sustained under the last mentioned Act. This section reads as follows:

"Sec. 12. That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided,* That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock."

The first question is whether Subd. (c) of Sec. 201 of the Act of Congress of March 4, 1923, which provides that for purposes of jurisdiction a Federal Intermediate Credit Bank shall be deemed a citizen of the State where it is located excludes the jurisdiction of this Court when invoked on the sole ground that the case is one arising under the laws of the United States, by reason of Federal incorporation.

In Herman v. Edwards, 238 U. S. 107, the Supreme Court had under consideration a similar clause in reference to National Banks. Sec. 24 of the Judicial Code gives the District Court jurisdiction in certain cases and the clause under consideration by the Supreme Court is contained in paragraph 16 which is as follows:

"Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks', Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. *And all National* (26) *banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located.*" (Italics mine).

The previous Acts of Congress (Act of Congress of August 13, 1888, of March 3, 1888, and of July 12, 1882) while providing that all national banking associations established under the laws of the United States should for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed

citizens of the States in which they respectively are located, contained a further express provision that the Circuit Court and District Court should not have jurisdiction other than such as they would have in cases between individual citizens of the same State. When the Act of 1888 was superseded by the Judicial Code, the words "And in such cases the Circuit and District Courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State" were omitted. The Supreme Court held that even though those express words had been omitted, nevertheless the Federal Courts would not have jurisdiction of a case brought by a National Banking Association on the sole ground that because of its Federal incorporation it is a case arising under the laws of the United States.

Herman v. Edwards was decided in 1915, and must be taken as settling the law that when Congress declares that a corporation organized under the laws of the United States shall for the purposes of jurisdiction be deemed a citizen of the State wherein it is located, such declaration has the effect of excluding the jurisdiction of United States Courts on the sole ground of the case being one arising under the laws of the United States, because of the Federal character of the corporation. When therefore Congress in providing by the Act of March 4, 1923, that each Federal Intermediate Bank should for the purposes of jurisdiction be deemed a citizen of the State where it is located, it must be assumed that it was in the light of the decision in Herman v. Edwards *supra*, and that the intention was to exclude jurisdiction of the Federal Courts when invoked on the sole ground that the case of such Federal Intermediate Credit Bank would be one arising under the laws of the United States. The plaintiff contends, however, that the restrictive clause in question declaring that for purposes of jurisdiction the Federal Intermediate Credit Banks shall be deemed citizens of the State where they are located, refers only to jurisdiction of the person and was intended only to fix the residence of such banks. But the difficulty with that contention is that Congress has used the word "jurisdiction" alone, and has not limited or restricted it to jurisdiction of the person, and moreover, such construction is inconsistent with the decision of the Supreme Court in
(27) Herman v. Edwards, *supra*.

It seems clear therefore that under the Act of Congress under which Federal Intermediate Credit Banks are organized, Federal Courts would not have jurisdiction of cases brought by or against them on the sole ground that such cases arise under the laws of the United States.

The next question is whether Subd. (c) of Sec. 201 of the Act of Congress of March 4, 1923, has been superseded or impliedly repealed by Sec. 12 of the Act of Congress of February 13, 1925.

In considering Sec. 12, it will be observed that it does not purport to be a grant of jurisdiction. The main object of the section is to exclude jurisdiction, and the proviso is peculiarly worded so as to exclude the idea that there was intended by that section any grant of jurisdiction. After first providing that no District Court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, the proviso states that this section "*shall not apply*" to any suit, action, or proceeding brought by or against a corporation incorporated by Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock. By the express terms of the proviso, the section does not apply to an action brought by the plaintiff. It follows therefore that the previous provision that no District Court shall have jurisdiction of any action, etc., can have no application to the case of this plaintiff. If the plaintiff claims that the Federal Courts have jurisdiction, it must seek its grounds in some other Act of Congress and cannot base its claim of jurisdiction upon Sec. 12, and on the other hand, if the defendant seeks to defeat the jurisdiction of the Federal Courts he cannot base his claim upon this section, because this corporation is expressly excluded from its effect. Sec. 12 neither confers nor excludes jurisdiction in the case of a corporation where the United States owns more than one-half of the stock. In other words, the jurisdiction must depend upon other Acts of Congress and not upon Sec. 12 in such cases, and when we refer to the other Acts of Congress, we find that jurisdiction is excluded. While it is a case arising under the laws of the United States, jurisdiction is excluded by Subd. (c) of Sec. 201 of the Act of Congress under which Federal Intermediate Credit Banks are organized. Nor is there any inconsist-

ency between that Act and Sec. 12 of the Act of February 13, 1925. It is hardly conceivable that Congress after creating Federal Intermediate Credit Banks and providing expressly that all the stock should be held by the Government and also providing that they should be deemed citizens of the State wherein they were located, and thereby excluding jurisdiction, could have intended to supersede or repeal that provision of such Act by the (28) language employed in the proviso to Sec. 12. If Congress had intended to confer jurisdiction or to repeal or supersede Subd. (c) of Section 201 of the Act of March 4, 1923, they could have used appropriate words to that effect, but instead of doing so, they in express terms excluded all such corporations from the operation of Sec. 12.

This view strengthened by a consideration of the history of Sec. 12, and the report of the Senate Committee in charge of the bill. While such reports cannot override the clear and certain provisions of a statute as finally enacted, yet they may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure.

Duplex v Deering, 254 U. S. 443, 474.

Section 12 was originally enacted in 1915 and applied only to railroad corporations and contained no exception in favor of the Government. It was originally Section 5 of the Act of Congress of January 28, 1915, 38 Stats. L. 804, which reads as follows:

"Sec. 5. No court of the United States shall have jurisdiction of any action or suit by or against any railroad company upon the ground that said railroad company was incorporated under an Act of Congress."

The original bill which was finally enacted as the Act of February 13, 1925, was Senate Bill 2060. The report of the Judiciary Committee of the Senate of April 7, 1924, shows that the original bill contained a re-enactment of Sec. 5 of the Act of January 28, 1915, but enlarging the same so as to apply to all corporations, but contained no proviso in favor of the Government, the proviso being added upon the recommendation of the Committee. The pertinent portion of the report of the Committee is as follows:

"Section 12 of the bill presents a distinct subject relating to the jurisdiction of the district courts of the United States. It is an enlargement of that provision of the existing law which declares that no district court shall have jurisdiction over suits brought by or against a railway corporation solely because it was incorporated by or under an Act of Congress. It is believed that this section should be somewhat restricted, and your subcommittee proposes the following amendment:

"Add to the section—

"*Provided,* That this section shall not apply to any suit, action or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half its capital stock."

It is clear from this report that it was the intention to (29) enlarge the existing law in reference to railway corporations but to restrict such enlarged provision by excluding corporations where the Government owned more than one-half of the stock. There is no suggestion anywhere in the report that there was any intention to confer jurisdiction in such cases or that there was any intention to supersede or repeal any of the provisions of law relating to Federal Intermediate Credit Banks.

It is to be observed that Sec. 5 of the Act of January 28, 1915, was not only superseded by Sec. 12 of the Act of February 13, 1925, but by Sec. 13 of the later Act, Sec. 5 of the Act of January 28, 1915, was *expressly repealed,* but the Act of February, 13, 1925, makes no mention whatever of any Acts in relation to the organization of Federal Intermediate Credit Banks, and contains nothing which would show any intention to repeal or supersede them.

The plaintiff relies upon American Bank & Trust Co. v. Federal Reserve Bank, 256 U. S. 350, and Sowell v. Federal Reserve Bank, 268 U. S. 449. But these cases are not in point. In American Bank & Trust Co. v. Federal Reserve Bank, the Court held that the Federal Reserve Banks created after the Judicial Code was enacted were not included in the phrase "National Banking Associations" and therefore were not prevented from

resorting to the Federal Courts in cases brought by them on the ground of their being Federal corporations. In Sowell v. Federal Reserve Bank, the Court held that the so-called "assignee clause" of Sec. 24 of the Judicial Code did not exclude suits where the sole ground of jurisdiction is that the suit arises under the laws of the United States, but applied merely to cases where the ground of jurisdiction is diversity of citizenship.

While a cursory reading of Sec. 12 might leave the impression that Congress intended that the Court should have jurisdiction in this case, nevertheless a careful study of it leads inevitably to the conclusion that such was not the intention. Stated in a nutshell, the difficulty is that the plaintiff is compelled to ask the Court to infer that it has jurisdiction from a section of an Act of Congress which expressly declares that that section shall have no application whatever to its case. The objection therefore to the jurisdiction is well taken and the motion to dismiss must prevail, and an appropriate order will be entered accordingly.

ERNEST F. COCHRAN,
U. S. District Judge.

Charleston, S. C.,
October 9, 1926.

ORDER OF DISMISSAL

(30) Filed October 9, 1926.

In the District Court of the United States for the Eastern District of South Carolina.

Federal Intermediate Credit Bank of Columbia, Plaintiff,

vs.

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company, and South Carolina Agricultural Credit Company, Defendants.

In an opinion filed this day, the Court has sustained

the objection to the jurisdiction of the Court. It does not appear that the objection can be cured by an amendment. However, the Plaintiff will be given an opportunity to amend so as to allege jurisdictional grounds if it be so advised. For these reasons and for the reasons set forth in the opinion,

It is

ORDERED, ADJUDGED, AND DECREED, That the objection of the defendant, Chas. S. Mitchell, to the jurisdiction of the Court be and the same is hereby sustained, and the plaintiff is given leave within twenty (20) days from the date of this order to serve upon the defendants' attorneys and file with the Clerk of this Court, an amended complaint, if it be so advised; but if the plaintiff shall fail so to serve and file such amended complaint within the time stated, then upon the expiration of twenty (20) days from the date of this order, the complaint herein shall be and is hereby dismissed for want of jurisdiction, without any further order of this Court.

ERNEST F. COCHRAN,
U. S. District Judge.

Charleston, S. C.
October 9, 1926.

ASSIGNMENT OF ERRORS

(31) Filed Oct. 29, 1926.

Now comes Federal Intermediate Credit Bank, of Columbia, plaintiff in error in the above numbered and entitled cause, and in connection with its petition for a Writ of Error in this cause assigns the following errors which plaintiff in error avers occurred on the trial thereof, and upon which it relies to reverse the judgment entered herein as appears of record:

1. That the Court erred in ruling and holding that the objection to the jurisdiction was well taken and the motion to dismiss must prevail, because the Federal Government owns all of the capital stock of the plaintiff,

Federal Intermediate Credit Bank, and it was chartered and organized under an act of the United States Congress, and this was an action arising under the laws of the United States and the District Court of the United States for the Eastern District of South Carolina had jurisdiction and the Court should have so held.

2. That the Court erred in rendering its Order of (32) Dismissal of this case upon the ground that the said Court had no jurisdiction of said cause, because in fact and in reality the said Court had jurisdiction under the constitution and the laws of the United States, and the Judge should have so held.

WHEREFORE plaintiff in error prays that the judgment of said Court be reversed.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Attorneys for Plaintiff in Error.

October 27, 1926.

Due and legal service of the foregoing Assignment of Errors acknowledged and a copy of the same retained at Beaufort, S. C., October 27, 1926.

.....

W. J. THOMAS,
Attorneys for Defendants, Chas. S. Mitchell.

CERTIFICATE OF JURISDICTION ONLY ISSUE

(33) Filed October 29, 1926.

This cause came on to be heard upon the Complaint and Answer of defendant Chas. S. Mitchell, other defendants did not appear or answer, and the plea to the jurisdiction of the Court, by said defendant.

The Complaint set forth two causes of action on two separate notes and asked judgment against the defendant for the amount represented by said respective notes. The complaint also set forth that it was a corporation

Due and legal service of the foregoing Notice, Petition (37) for Writ of Error, Assignments of Error and Praecipe, acknowledged, and a copy of the same retained at Beaufort, S. C., October 27, 1926.

.....

W. J. THOMAS,
Attorneys for Defendant, Chas. S. Mitchell.

(38) **MEMORANDUM**

Petition for Writ of Error filed October 29, 1926.

Order allowing Writ of Error filed October 29, 1926.

Writ of Error issued and filed October 29, 1926.

Bond on Writ of Error, dated October 28, 1926.

Penalty $250.00 conditioned for costs.

Obligors: Federal Intermediate Credit Bank of Columbia, as principal, and National Surety Company, New York, N. Y., as surety.

Citation Filed October 29, 1926.

Service acknowledged November 1, 1926.

STIPULATION FOR CLERK TO TRANSCRIPT RECORD

Filed November 1, 1926.

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va.; and that it be

printed under the supervision of the Clerk of that Court, in accordance with Rule 23.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Counsel for Appellant.

BUIST & BUIST,
W. J. THOMAS,
Counsel for Appellees.

November 1, 1926.

(39) **CLERK'S CERTIFICATE**

In the District Court of the United States for the Eastern District of South Carolina.
At Law.

I, Richard W. Hutson, Clerk of the District Court of the United States for the Eastern District of South Carolina, do hereby certify, that the foregoing is a true and correct copy of the record and proceedings in the case of Federal Intermediate Credit Bank, of Columbia, Plaintiff, against Chas. S. Mitchell, et al., Defendants, together with the Order of Dismissal and all papers relating to the same, as appears by the original record now on file in my office.

Given under my hand and seal of said Court, at Charleston, S. C., this 18th day of November, 1926.

RICHARD W. HUTSON,
C. D. C. U. S. E. Dist. S. C.

(SEAL)

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 2591.

Federal Intermediate Credit Bank of Columbia, South Carolina, Plaintiff in Error,

versus

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company, and South Carolina Agricultural Credit Company, Defendants in Error.

Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

November 19, 1926, the transcript of record is filed and the cause docketed.

Same day, the original petition for writ of error, order allowing writ of error, writ of error, bond and citation are certified up under Sec. 7 of Rule 14.

Same day, the appearance of Randolph Murdaugh and D. W. Robinson is entered for the plaintiff in error.

November 22, 1926, the appearance of Geo. L. Buist is entered for the defendant in error, Charles S. Mitchell.

November 27, 1926, the appearance of W. J. Thomas is entered for the defendants in error.

December 3, 1926, twenty-five copies of the printed record are filed.

ARGUMENT OF CAUSE.

January 28, 1927, (January term, 1927), cause came on to be heard before Waddill and Rose, Circuit Judges, and Baker, District Judge, and is argued by counsel and submitted.

ORDER RESTORING CASE TO DOCKET FOR A RE-ARGUMENT.

Filed and Entered April 14, 1927.

(Style of Court and Title Omitted.)

FOR REASONS APPEARING TO THE COURT, this cause, which was on January 28, 1927, argued and submitted, is restored to the docket for a re-argument therein to be had at the present term.

EDMUND WADDILL, JR.,
Senior Circuit Judge.

April 14, 1927.

RE-ARGUMENT OF CAUSE.

April 27, 1927 (April term, 1927), cause came on again to be heard before Waddill, Parker and Northcott, Circuit Judges, and is re-argued by counsel and submitted.

OPINION. 41

Filed July 5, 1927.

United States Circuit Court of Appeals

FOURTH CIRCUIT

No. 2591.

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA,
Plaintiff in Error,

versus

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, and SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY,
Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

(Argued April 27, 1927. Decided July 5, 1927.)

Before WADDILL, PARKER and NORTHCOTT, Circuit Judges.

D. W. ROBINSON (RANDOLPH MURDAUGH on brief) for Plaintiff in Error, and GEORGE L. BUIST (BUIST & BUIST and WILLIAM J. THOMAS on brief) for Defendants in Error.

PARKER, Circuit Judge:

This was an action instituted by the Federal Intermediate Credit Bank, of Columbia, S. C., in the United States District Court for the Eastern District of South Carolina, to recover judgment on certain promissory notes in an amount exceeding three thousand dollars exclusive of interest and costs. The action was dismissed for lack of jurisdiction, and the only question presented by the assignment of error is whether this ruling was correct. The plaintiff is a corporation created under the Act of Congress of March 24, 1923, 42 Stat. 1454, all of its stock being owned by the Government of the United States, and the contention in its behalf is that, because of the federal incorporation and government ownership of stock, the Federal Courts have jurisdiction of the action. The contention of defendants, on the other hand, is that plaintiff, by the very act under which it is created, is denied the right to invoke the jurisdiction of the Federal Courts on the ground of federal incorporation.

The District Courts of the United States are given original jurisdiction of actions where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars; "and (a) arises under the Constitution or laws of the United States * * *." Judicial Code, Section 24, Par. 1. The universal construction of this clause, since its original enactment in 1875, has been that corporations organized under acts of Congress, when suing or being sued, where the jurisdictional amount is involved, have the right, on the ground that such suits arise under the laws of the United States, to invoke the jurisdiction of the Federal Courts, except where the particular suit is excluded from the federal jurisdiction by some specific enactment. *Bankers Trust Co.* v. *Tex. & Pac. Ry. Co.* 241 U. S. 295, 306-7; *American Bank & Trust Co.* v. *Federal Reserve Bank* 256 U. S. 350; *Sowell* v. *Federal Reserve Bank* 268 U. S. 449. Since, therefore, plaintiff is created under act of

Congress and this action involves the jurisdictional amount, the District Court had jurisdiction of the action unless its jurisdiction has been excluded by some special act.

The question then narrows itself to this: Is there a special act excluding federal incorporation as a ground of federal jurisdiction in suits by or against Federal Intermediate Credit Banks? We think that there is. Section 201 (c) of the act under which these banks are created (42 Stat. 1454, U. S. C. Title 12, Section 1023) provides:

"(c) Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of jurisdiction shall be deemed a citizen of the State where it is located."

We are not left in doubt as to the meaning of the language "for purposes of jurisdiction shall be deemed a citizen of the state where it is located". Practically the same language is used in paragraph 16 of section 24 of the Judicial Code, which, after providing for jurisdiction in the Federal Courts in certain cases affecting National Banking Associations, continues:

"And all National Banking Associations established under the laws of the United States *shall, for the purposes of all other actions by or against them*, real, personal, or mixed, and all suits in equity, *be deemed citizens of the States in which they are respectively located.*" (Italics ours).

This section was before the Supreme Court in *Herman* v. *Edwards* 238 U. S. 107, and it was there held that the effect of the language used was to exclude federal incorporation as a ground of federal jurisdiction. In that case it was argued that there had been omitted from the section of the Judicial Code certain language contained in the act of 1888 relating to suits by and

against National banks which provided that the Federal Courts should "not have jurisdiction other than such as they would have in cases between individual citizens of the same state", and that the effect of omitting this from the section of the Code was to restore jurisdiction in that class of cases. In denying this contention and holding that jurisdiction was excluded by the language of the Code above quoted, the Court said:

"Section 4 of the Act of 1888, as will be seen, opened with the provisions which excluded national banks from the Federal jurisdiction which otherwise would have attached to controversies concerning them. This being done, the statute proceeded to provide that the exclusion previously specified should not include certain classes of controversies which it was deemed best should come under the Federal jurisdiction, thus leaving those classes of cases under the general rule, since they were carved out by the last clause of the section from the provisions as to exclusion which were found in the first. In reenacting these provisions of the Act of 1888 in par. 16 of sec. 24 of the Judicial Code, obviously to make the purpose of the reenacted statute clearer, just the opposite form of statement was resorted to, since paragraph 16 opens by conferring Federal jurisdiction only in those classes of cases which were kept within that jurisdiction by the concluding clause of sec. 4 of the Act of 1888, and hence no jurisdiction was given as to the other classes of cases which were excluded from such jurisdiction by the Act of 1888. The reenacted section in other words, instead of generally stating what was excluded from jurisdiction and then carving out exceptions, as was done in the Act of 1888, gave jurisdiction only in the cases where it was intended to give it *and then proceeded to declare that in all other cases within the contemplation of the section there should be no jurisdiction, thus making the lines clear and broad and leaving no room for controversy or doubt.*" (Italics ours).

Counsel for plaintiff, in endeavoring to distinguish the case at bar from *Herman* v. *Edwards*, lay much stress on the reasoning of the Supreme Court in that case

to the effect that an intention to change the rule prescribed by the statute of 1888 should not be indulged without a clear manifestation of such purpose. But, of course, whatever the reasoning by which the Court arrived at the meaning of the statute, the interpretation once made became as much a part of the statute as the language of the statute itself, and when practically the same provision respecting jurisdiction was adopted as a part of the Intermediate Credit Bank Act, it carried with it the interpretation which the Supreme Court had placed thereon. *Copper Queen Mining Co.* v. *Arizona Board* 206 U. S. 474. It is suggested that the purpose of Congress was not to exclude jurisdiction, but to provide for venue; but such interpretation would ignore the use of the word "jurisdiction" in the act itself, as well as the interpretation which the Supreme Court had placed upon the remainder of the language used. We must assume that Congress did not mean "venue" when it said "jurisdiction", or for an entirely different construction to be given the language here from that which the Supreme Court had given it in *Herman* v. *Edwards*. We think, therefore, that there can be no question that the effect of the quoted provision of the act of 1923 was to exclude federal incorporation as a ground of jurisdiction in this class of cases.

The only question which remains is whether jurisdiction of suits by or against Federal Intermediate Credit Banks has been affected by section 12 of the Act of February 13, 1925, 43 Stat. 941, U. S. C. Title 28, section 42. That section provides:

"Sec. 12. That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress; *Provided*, That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock."

It is clear that if section 201 (c) of the Act of March 4, 1923 were not in force, the section just quoted would not exclude jurisdiction in this case; for, as the United States owns all of the capital stock of the Intermediate Credit Banks, suits by or against them would fall within the exception. But that, of course, is not the situation. Section 201 (c) has not been repealed and its effect, as we have seen, is to exclude jurisdiction in such cases. Now section 12 of the Act of February 13, 1925 is a general statute excluding federal incorporation as a ground of federal jurisdiction. The proviso of section 12 merely withdraws from the operation of that section corporations wherein the Government of the United States is the owner of more than one-half of the capital stock. It does not attempt to restore jurisdiction in cases where jurisdiction has been excluded by other statutes, and in such cases the jurisdiction remains exactly as it was before the statute was enacted. To state the matter in another way, section 12 of the Act of 1925 is a limitation upon the jurisdiction conferred generally by the Act of 1875, now paragraph 1 of section 24 of the Judicial Code. The proviso is merely a limitation upon that limitation and has nothing to do with an entirely independent limitation contained in an altogether different statute.

It may be suggested that section 12 of the Act of February 13, 1925, was intended as a consolidation and implied repeal of prior acts dealing with jurisdiction of suits by or against corporations created under Act of Congress; but, in view of the history of the legislation, we are satisfied that this view is not correct. Federal incorporation was excluded as a ground of federal jurisdiction in suits by or against federally incorporated railroads by section 5 of the Act of January 28, 1915, 38 Stat. 804. The report of the Judiciary Committee of the Senate shows that section 12 of the Act of February 13, 1925, was intended as an enlargement of the provision of section 5 of the Act of January 28, 1915, and it appears that, upon recommendation of the committee, the proviso

now appearing as a part of the section was adopted. Section 13 of the act as passed expressly repealed section 5 of the Act of January 28, 1915; but no reference whatever was made to section 201 (c) of the Intermediate Credit Bank Act of March 24, 1923 either in the report of the Committee or in the act itself.

It is true that the Act of 1925 contains a general clause repealing "All other Acts and parts of Acts in so far as they are embraced within and superseded by this act or are inconsistent therewith". But the provision of the Act of 1923 under consideration is neither embraced within nor inconsistent with section 12 of the Act of 1925. The Act of 1923 applies to Federal Intermediate Credit Banks, all of whose stock is owned by the Government of the United States; the proviso contained in section 12 expressly excludes such corporations from the operation of section 12. Most certainly, therefore, the former act is not embraced within the latter. And it is equally certain that the former is not inconsistent with the latter; for a provision excluding federal jurisdiction in a certain class of cases could not possibly conflict with a provision excluding jurisdiction in a wider class, but excepting from the latter provision cases covered by the former. In this connection, it is worthy of note that, in the Code enacted by Congress as containing *prima facie* the laws in force December 7, 1925, section 201 (c) of the act of March 4, 1923, is included as section 1023 of Title 12, notwithstanding the inclusion also of section 12 of the act of February 13, 1925 as section 42 of Title 28.

Our conclusion, therefore, is that the effect of the Act of 1925 is merely to exclude federal incorporation as a ground of federal jurisdiction, except in the case of corporations, more than half of whose stock is owned by the government. As to such corporations, it does not exclude jurisdiction and does not confer or restore it, but allows it to remain as it is under existing law. The existing law applicable here is the quoted provision of the

Act of 1923, and under it the Court was without jurisdiction.

Much can be said in support of the view that the right to resort to the Federal Courts should be preserved to corporations whose stock is owned by the Federal Government, but, whatever our views as to this, the question involved is clearly one for Congress and not for the Courts.

Affirmed.

WADDILL, Circuit Judge, dissenting:

I regret exceedingly my inability to concur with my brethren in their views expressed in the majority opinion, and because of the unusual importance of the case, venture to give my reasons for not so doing.

Special consideration must be given to the character of the case, in order to arrive at the correct conclusion of the question involved. Its importance will be readily seen, as it involves the right of the federal government to maintain a suit in its own courts to enforce a liability in its behalf arising in a corporation chartered and owned by it.

Since the decision of *Osborne* v. *Bank*, 9 Wheat. 738, there has been no doubt that rights in such corporations arise under the laws of the United States, and hence jurisdiction to maintain suits by or against such corporations exists by reason of the federal power incident to their creation. A long line of decisions follows *Osborne* v. *Bank*, *supra*, 9 Wheat. 738; *Petri* vs. *Commercial National Bank*, 148 U. S. 648; *Bankers Trust Co.* v. *T. & P. R. R.* 241 U. S. 367; *American Bank & Trust Co.* vs. *Fed. Reserve Bank*, 256 U. S. 365-7; *Sowell* vs. *Fed. Reserve Bank*, 268 U. S. 453, 456; *Rose Fed. Jur. & Pro.* (3d ed.) p. 235, sec. 238; *Simkins Fed. Prac.* Rev. ed., p. 401.

This would seem doubly true where a corporation thus deriving its existence from the federal government,

is also owned by it; and hence in the absence of some specific legislation on the subject, limiting and prescribing the federal jurisdiction, there can be no doubt of its existence; and that the federal courts had jurisdiction of suits thus arising under the federal law,—this because of the federal question involved and the ownership by the government, and not because of any mere citizenship of the parties.

A limitation was placed upon this right to maintain suits in the federal courts in cases by or against national banks (act 1882, 22 Stat. L. 162-3), and subsequently by a further act of 1888, 25 Stat. L. 436, which acts are now embodied in section 24, par. 16, Judicial Code, 1911; 4 Fed. Stat. Ann. 1054; U. S. Comp. Stat. (1916) 991.

By section 5 of the act of January 28, 1915, 38 Stat. L. 804, section 5 U. S. Comp. Stat. (1916) 1233-a, jurisdiction is denied to the courts of the United States over suits by or against railroads, upon the ground that such companies were incorporated by act of Congress.

By act of March 24, 1923, 42 Stat. L. 1454, sec. 201-c, creating the Federal Intermediate Credit Bank, which was an amendment to the Federal Farm Law passed 7 January, 1916, 39 Stat. L. 360, it was prescribed that for the purpose of jurisdiction such banks should be deemed to be citizens of the State where located.

By section 12 of the act of February 13, 1925, 43 Stat. L. 941, Fed. Stat. Ann. 1925, and U. S. Comp. Stat. sec. 9912 (1925 supp.), the United States courts were denied jurisdiction of any action or suit by or against any corporation on the ground that it was incorporated by or under any act of congress, unless such corporation is one wherein the government of the United States is the owner of more than one half of its capital stock.

A careful consideration of these several provisions of the law it seems to me clearly demonstrates the existence of the jurisdiction of the United States courts in the instant case. The Federal Intermediate Credit Bank

is a federal corporation created by an act of Congress; and hence suits by or against it, like those arising under the national bank acts, existed in the federal court prior to the legislation hereinbefore recited, and likewise in the case of railroads prior to the act of January 28, 1915. After the passage of these acts, jurisdiction of the federal courts in such cases arising by reason of the federal charter, was specifically withdrawn; and the terms of the several acts above mentioned denying jurisdiction, while not in the same language, were substantially alike in that the right to sue and be sued because of their respective existence under acts of Congress, should not authorize such suits to be brought in the federal courts; and this legislation so remained as to the corporations mentioned, as respects their right to sue and be sued, until Congress saw fit to place them in substantially the same category as similar corporations chartered under State laws.

In the passage of the act of February 13, 1925, a different and more extended policy was adopted. Congress then determined that no federal court should have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated under an act of Congress. This was a sweeping and clear provision, and placed all federal corporations upon the same basis as respects the jurisdiction of the federal courts, predicated alone upon the existence of the federal question. Congress in thus limiting the jurisdiction of all suits as to all corporations created by federal charter, passed sec. 12 of the act of 13 February, 1925, with a proviso as to federally owned corporations, as follows:

"Sec. 12. (District Courts—Jurisdiction of actions against Federal Corporations.) That no district court shall have juridiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided, That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or*

under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock." (Italics mine).

Upon thus denying jurisdiction as to all corporations, because of the existence of the federal question, Congress saw fit to exempt from the operation of the amendment those in which the government owned more than one half of the capital stock. In other words the section, in a few clear and simple words denied to the district courts of the United States jurisdiction of all suits by or against corporations, merely because the same were created by act of Congress; but with a proviso equally far reaching and clear, that where the government of the United States owned more than one half of the capital stock of the corporation, the limitation should not apply, and that as to them, such courts were not deprived of jurisdiction because of their federal character.

This would seem to be a reasonable and wise enactment in view of the curtailment of jurisdiction of all corporations because of such federal question, as well as of the small number of such corporations covered by the specific acts hereinbefore recited. No question of the repeal of the previous acts, either by implication or otherwise is necessarily involved, although the provisions of the act of 13 February 1925, sec. 12, covering the same general subject, respecting jurisdiction of the federal courts because of federal charters, are broad enough to effect such repeal. The new act places no limitation upon the jurisdiction arising from the existence of a federal question, its language being substantially the same as that covered by the prior separate acts save and except it was made applicable to all such corporations, with a general proviso that the limitation should not apply to any corporation of which the government of the United States is the owner of more than one half of its capital stock.

It would seem that the Congress had the undoubted

right to place a limit upon the jurisdiction of its courts in cases arising under charters granted by the federal government. Manifestly, instead of several special acts withdrawing the jurisdiction to sue or be sued because of the federal question, Congress might by simple enactment have embraced all such corporations; and it might have done so and excepted from the operation government owned corporations, either in part or as a whole. That is exactly what was done by the far reaching provisions of the Act of February 13, 1925, which so radically altered and affected generally the jurisdiction of the federal courts. Instead of attempting to follow or change all of the existing legislation affecting the right of corporations to sue and be sued because of the existence of the federal question, a sweeping provision eliminating entirely all corporations save those in which the government owned more than one half of the capital stock was made; and to avoid any possible confusion on the subject, section 13 of the Act of 13 February 1925, provided for the repeal of all other Acts, as follows:

"Sec. 13. That the following statutes and parts of statutes be, and they are, repealed; * * * All other Acts and parts of Acts in so far as they are embraced within and superseded by this Act or are inconsistent therewith."

It is thus made clear that Congress excepted from the provisions of the Act denying jurisdiction to the federal courts of suits because of their federal character, those in which the government was the owner of more than one half of the capital stock of the corporation in suit. This is what was done. The enactment was enlarged making the same applicable not to a few, but to all corporations chartered by the government, the proviso simply excepting from the provisions thereof corporations in which the government owned more than one half of the capital stock; and as to such suits, the instant case being

within that class, jurisdiction remained in the federal courts by reason of the existence of the federal question involved.

A careful analysis of the views taken by those maintaining the contrary position, will make clear that no effect is given to the meaning of the proviso respecting the right of the government to maintain suits of this class within its own courts. This of itself would be a sufficient answer and objection to the interpretation contended for, as the act manifestly should be so construed as to give effect and meaning to all of its provisions, and not to a part only. While the courts have nothing to do with the reasons actuating Congress in what it did or should have done, and we are bound by what it did, still the justice and reasonableness and right of the proviso in question must commend itself to all giving serious consideration to the subject. It should not be assumed that the congress of the United States would pass an act the effect of which was to place billions of the public money in the hands of banking institutions created by it and scattered throughout the country, without at the same time taking the precaution to retain jurisdiction of such moneys within its courts, if it saw proper to do so. Such course would be almost unthinkable.

All sorts of conditions might and most probably would arise incident to the handling and safe-keeping of the vast amounts involved, in at least some of the places where the institutions are located, that should at once suggest the great undesirability of the adoption of the course contemplated.

Special reliance is placed upon the case of *Herman* vs. *Edwards*, 238 U. S. 107, 118, by those seeking to establish the appellee's contention. It will be observed that this decision long ante-dated the two acts under consideration here, viz: the act creating the Federal Intermediate Credit Bank, and the limitation placed upon the jurisdiction of the federal courts by reason of a federal

question generally; and I can not see that the case is of controlling interest here.

From my view, the district court was clothed with jurisdiction, and the decree denying the same and dismissing the bill should be reversed.

F. J. Mitchell Printing Co., Richmond, Va.
6-14-27-100

JUDGMENT.

Filed and Entered July 8, 1927.

UNITED STATES CIRCUIT COURT OF APPEALS.

Fourth Circuit.

No. 2591.

Federal Intermediate Credit Bank of Columbia, South Carolina, Plaintiff in Error,

vs.

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company, and South Carolina Agricultural Credit Company, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina.

THIS CAUSE came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs.

JOHN J. PARKER,
U. S. Circuit Judge.

July 8, 1927.

July 18, 1927, petition of plaintiff in error for a stay of the mandate pending application in the Supreme Court for a writ of *certiorari* is filed.

ORDER STAYING MANDATE.

Filed July 18, 1927.

(Style of Court and Title Omitted.)

UPON THE APPLICATION of the Plaintiff in Error, by D. W. Robinson, Esq., its attorney, and for good cause shown,

IT IS ORDERED that the mandate of this Court in the above case be, and the same is hereby, stayed pending the application of the Plaintiff in Error in the Supreme Court of the United States for a writ of *certiorari* to this Court, or until the further order of the said Supreme Court or this Court, provided said application is filed in the said Supreme Court within 60 days from this date.

July 18, 1927.

JOHN J. PARKER,
U. S. Circuit Judge.

CLERK'S CERTIFICATE.

United States of America,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remains among the records and files of the said Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 5th day of August, A. D. 1927.

(Seal of Court.)

CLAUDE M. DEAN, Clerk,
U. S. Circuit Court of Appeals,
Fourth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILED
AUG 18 1927
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 456

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA,
PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

NOTICE OF, MOTION AND PETITION FOR, AND BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Attorneys for Petitioner.

RICHMOND PRESS, INC., PRINTERS

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51554

NOTICE.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA,
PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

To Messrs. W. J. Thomas and Buist & Buist, attorneys for Respondents in the above entitled action:

You are hereby notified that a petition for a writ of certiorari in the above entitled cause was filed in the Supreme Court of the United States on the .... day of .....A. D., 1927. A printed copy of the record and a printed copy of the petition and supporting brief are served upon you herewith.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Counsel for Petitioner.

Service accepted this ... day of ..... A. D., 1927.

.....

.....
Counsel for Respondents.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1927.

FEDERAL INTERMEDIATE CREDIT BANK, OF COLUMBIA, SOUTH CAROLINA,
PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

MOTION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Now comes Federal Intermediate Credit Bank of Columbia, S. C., plaintiff, petitioner, above named, by its counsel, and moves this Honorable Court that it will by certiorari or other proper process directed to the Honorable Judges of the United States Circuit Court of Appeals for the Fourth Circuit, require said Court to certify for its review and determination the certain cause in the said United States Circuit Court of Appeals, lately pending, wherein petitioner, Federal Intermediate Credit Bank of Columbia, was plaintiff in error, and

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company and South Carolina Agricultural Credit Company were defendants in error, and to that end it tenders herewith its petition and brief with a certified copy of the entire record in said cause in the United States Circuit Court of Appeals for the Fourth Circuit.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Counsel for Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable Supreme Court of the United States:

The petition of Federal Intermediate Credit Bank, plaintiff in error, respectfully shows to this Honorable Court:

(a) STATEMENT OF CASE.

That Petitioner commenced this action in the District Court of the United States for the Eastern District of South Carolina on August 31st, 1926, by filing and serving its summons and complaint praying for judgment against the defendants for the sum of Nine Thousand ($9,000.00) Dollars, with interest on Six Thousand ($6,000.00) Dollars thereof from July 11, 1926, at the rate of six and one-half (6½%) per cent, and interest on Three Thousand ($3,000.00) Dollars thereof from August 27, 1926, at the rate of eight per cent (8%) per annum, and ten per cent (10%) of the total amount as attorney's fees, and for costs and disbursements. Transcript, p. 6.

ISSUE—JURISDICTION, ONLY.

THE COMPLAINT sets forth:

(1) That the Plaintiff, the Federal Intermediate Credit Bank of Columbia, is a corporation organized under an act of Congress of the United States of America, with its principal place of business in the City of Columbia, State of South Carolina. Transcript, p. 2.

(2) and (3) That the defendants, Chas. S. Mitchell and W. E. Richardson, are citizens and residents of the State of South Carolina; and Truckers Supply Company and South Carolina Agricultural Credit Company are corporations organized under the laws of the State of South Carolina. Transcript, p. 2.

(4) That the cause of action is of a civil nature between Federal Intermediate Credit Bank and these defendants, respondents and corporations of the State of South Carolina, and that the matters in dispute, exclusive of interest and costs, exceed the sum of Three Thousand ($3,000.00) Dollars. Transcript, pp. 2 and 3.

The second cause of action is similar to the first, and involves a Three Thousand ($3,000.00) Dollar note, given by the same parties.

ANSWER. Admits Acts of Congress and paragraphs as to respondents and corporate existence of the defendants, and as to the execution of the note and the amount in dispute. Transcript, p. 8.

JURISDICTION. But the defendants, by way of further answer, especially challenge the jurisdiction of the Federal Court. Transcript, pp. 9-10. And the Certificate of District Judge Cochran shows this is the only

question involved. Transcript, p. 34. Opinion of C. C. A., p. 2.

There are also further answers setting forth various defenses to the notes, not having any special bearing on the question sought to be presented. Transcript, pp. 10-14.

(b) SUMMARY OF REASONS FOR CERTIORARI.

This case presents an issue of great public concern, is far reaching in its consequences and is of grave importance to the Government and to the other Intermediate Credit Banks, of which there are eleven in the United States, in that:

1. The Federal Intermediate Credit Banks, one and all, were organized under the Act of Congress, March 24, 1923, 42 Stat. L., 1454; and this was an amendment to and extension of Federal Farm Loan Act of 1916, 39 Stat. L. 360.

2. All of the capital stock of the Bank is owned by the United States Government, Sec. 205.

3. A proper construction of that portion of the Act, Sec. 201 (c), relating to jurisdiction, is that this clause relates to jurisdiction only in the sense of venue, the District in which to bring a suit by or against such a bank. This construction is reasonable and harmonizes the act with kindred acts, subsequent acts and the new U. S. Code.

4. There is nothing in the Act, either expressly or by clear implication, taking it out of the rule which ordinarily confers jurisdiction on a Federal Court.

5. This question has never been presented to or passed upon by any Federal Court other than by the decision from which we are now appealing.

6. The Act of Congress of Feb. 13, 1925, 43 Stat. L. 936, Sec. 12, does not take away, but recognizes this jurisdiction in the Federal Court; or if it be considered a general amendment and revision of the judicial Code on the question of jurisdiction, then it confers jurisdiction if it was not already in the Federal Court.

BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

1. The Federal Intermediate Credit Bank, being chartered under an act of Congress, any suit by or against it "arises under the * * * laws of the United States" and this confers jurisdiction on the Federal Court under the law. Act of March 3, 1875, Judicial Code, Sec. 24, sub-section first (a), Simpkins Fed. Practice, Revised edition, p. 401; *Osborne* v. *Bk.*, 9 Wheat. 805, 808, 819, 822-3; 6 L. Ed. 220, 224, and cases in Roses Notes, pp. 149, 169; *Bankers Trust Co.* v. *Tex. & P. R. Co.*, 241 U. S. 306-7; 60 L. Ed. 1014-15; *Amer. Bank & Trust Co.* vs. *Federal Reserve Bk.*, 256 U. S. 356-7; 65 L. Ed. 989; *Petri* vs. *Commercial Natl. Bank*, 148 U. S. 648; 35 L. Ed. 1144; *Sowell* vs. *Fed. Reserve Bk.*, 268 U. S. 453-6; 69 L. Ed. 1047-9; *Smith* vs. *Kansas City T. & T. Co.*, 255 U. S. 199; 65 L. Ed. 585.

The same rule and the same law applies where a subsidiary corporation is chartered by another which derives its authority to act and to charter the subsidiary corporation from an Act of Congress. *Rosenberg* vs. *U. S. Shipping Board Emergency Fleet Corp.*, 271 Fed. 956.

2. Jurisdiction being conferred by the general statutes and the Judicial Code, *any act limiting or taking away the jurisdiction* is to be *construed strictly* and the purpose to take away must appear *explicitly or by clear implication. Bankers Trust Co.* vs. *T. & P. R. Co.*, 241 U. S., pp. 306-7:60 L. Ed. 1014-15; Endlich on Interpre-

tation of Statutes, Sec. 151, 155; *Davies* vs. *Slocomb,* 263 U. S. 161; 68 L. Ed. 228; *Emlenton Refining Co.* vs. *Chambers,* 14 F. (2d) 105 (C. C. A. Pa.); 59 L. Ed. 299; *U. S.* vs. *Barnes,* 222 U. S. 520; 56 L. Ed. 293; *Anderson* vs. *Pac. Coast Steamship Co.,* 225 U. S. 198-9; 56 L. Ed. 1052-3.

3. The Government itself owns the Bank (42 Stat. L., p. 1454, Sec. 205), and the rule would apply in regard to relinquishing rights of the government, to-wit, that *nothing passes but what is conveyed in clear and explicit language. U. S.* vs. *Oregon & Cal. R. Co.,* 164 U. S. 539; 41 L. Ed. 544-5; *Caldwell* vs. *U. S.,* 250 U. S. 20-1; 63 L. Ed. 818.

4. EXAMPLES. By reference to the cases where Congress has limited or taken away the jurisdiction from its own courts, it will be seen that in either instance the act has been *clear and explicit.*

(a) Act of 1882, 22 Stat. L. 162-3, as to jurisdiction of suits by and against National Banks, provided: "*The jurisdiction* for suits hereafter brought * * * for National Banking Associations, except suits between them and the United States, or its officers or agents, *shall be the same as and not other than* the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such National Banking Associations may be doing business, and such suits may be begun."

(b) The act of 1888, 25 Stat. L., p. 436, provides: "That all National Banking Associations shall * * * for the purpose of *all actions by or against them,* * * * be deemed *citizens of the states* in which they are respectively located; and * * * Courts *shall not have jurisdiction other than such as they would have in cases*

between individual citizens of the same State." Then follow certain exceptions.

(c) The Judicial Code, enacted in 1911, Sec. 24, giving jurisdiction to Federal Courts in sub-section sixteenth, provides: First, for jurisdiction in the Federal Court of certain classes of suits relating to National Banks. And then provides: "and all National Banking Associations * * * *for the purposes of all other actions by or against them,* * * * be deemed *citizens of the states in which they are respectively located."*

(d) Act of Jan. 28, 1915, 38 Stat. L. 804, took away the jurisdiction of Federal Courts as to railroad corporations chartered by Congress in this language: *"No Court* of the United States *shall have jurisdiction* of any action or suit by or against any railroad company *upon the ground* that the said railroad company *was incorporated under an act of Congress."*

(e) By the amendment to the Federal Employer's Liability Act of 1910, 36 Stat. 291, ch. 143, Congress provided among other things: *"No case arising under this act* and brought in any State Court of competent jurisdiction, *shall be removed to any Court of the United States."*

5. Act creating Federal Intermediate Credit Banks, 42 Stat. L., p. 1454, Sec. 201 (c) provides: "(c) Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, *and for purposes of jurisdiction shall be deemed a citizen of the State where it is located."*

A comparison of this act with the examples cited above under 4, shows that this section does not bear the clear and explicit meaning which is customary with all of the acts where the Federal Courts are deprived of a

jurisdiction which they would otherwise have. If the jurisdiction is taken away at all it is by implication and contrary to the rules in reference thereto laid down in *Bankers Trust Co.* vs. *T. & P. R. Co.;* Endlich on Interpretation of Statutes; *Emlenton Refining Co.* vs. *Chambers*, and the other cases cited above under 2.

But we respectfully submit that the reasonable interpretation of this sub-section of the Act is that it is referring to the location, venue (district) where a suit should be brought; and not the Court (Federal or State) in which it is to be brought.

This interpretation reconciles and harmonizes the act with the regular rules for interpretation of statutes, and with the other statutes limiting or taking away jurisdiction; and with this interpretation we are not forced to believe that a sovereign relinquishes one of its main attributes, that of passing on, preserving and protecting its own property rights, through its own judiciary.

Of course, it was necessary to have a location for the Bank in order to determine in what District of the Federal Courts it could and should sue. Judicial Code, Sec. 51; *Macon Grocery Co.* vs. *A. C. L. R. Co.,* 215 U. S. 508-9; 54 L. Ed. 304.

And this construction must seem the more reasonable when we consider that this, and each of the twelve Federal Intermediate Credit Banks were established for the purpose of operating in and serving the needs of several states, while their habitat or actual locations were necessarily in one state and in one Federal district.

6. *Hermann* vs. *Edwards,* 238 U. S. 111-12, 113, 116-18; 59 L. Ed. 1227-9. A careful examination of this case, in so far as it undertakes to take away the jurisdiction of the Federal Court based upon the interpretation of the clause "be deemed citizens of the States in which they are respectfully located" will show that the writer of the opinion considered the acts of 1882 and 1888,

which were clear and explicitly beyond question, as not repealed, but still subsisting with the re-enactment in sub-section sixteenth of Sec. 24 of the Judicial Code. These previous acts, together with the interpretation thereof, were considered by the court as a part of the law contained in the judicial code, and controlling on this question of jurisdiction.

The opinion also lays much emphasis upon the case of *Whittemore* vs. *Amoskeag National Bank*, 134 U. S. 529-30; 33 L. Ed. 1004. And this case was itself decided in 1890, after the act of 1882 and 1888, respectively, and based on these two statutes.

All the cases which we have found in which *Hermann* vs. *Edwards* was subsequently cited or discussed, will show that it is nowhere used for the purposes for which it is invoked here. See *Chesbrough* vs. *Woodworth*, 244 U. S. 78-9; 61 L. Ed. 1005; *Federal Reserve Bank of Dallas* vs. *Webster*, 287 F. 586 (D. C., N. D., Tex.); *Toledo Fence & Post Co.* vs. *Lyons*, 290 F. 644 (C. C. A., 6th Cir.); *Wegman* vs. *Hulse*, 13 F. (2d) 208 (D. C., W. D., N. Y.); *Davis* vs. *McFarland*, 15 F. (2d) 613 (C. C. A., Tex.).

7. Act of Feb. 13, 1925, 43 Stat. L. 936. This purports to be an act to amend the Judicial Code, and it does so in numerous and material respects. Sec. 12 would seem to further take away the jurisdiction of Federal Courts over Federal corporations, in addition to the previous acts, which are mentioned above under 4, and contains a sweeping provision on this subject. The proviso contained in it that it should not apply to any corporation, although incorporated by Act of Congress "wherein the Government of the United States is the owner of more than one-half of its capital stock", was clearly intended to preserve the inherent governmental quality of administering, protecting and passing upon the rights concerning its own property.

It is wide enough and clear enough to embrace Federal Intermediate Credit Banks. It does repeal and affect the general law conferring jurisdiction upon Federal Courts as to Federal corporations, as contained in Section 24 of the Judicial Code to the extent and only to the extent mentioned therein. See Sec. 13 of the same act.

We think the act of 1925, Sec. 12, is a clear recognition that the jurisdiction in Federal Courts exists in a case like ours, and if there was doubt about it, this very act, together with its general purpose is wide enough and broad enough to confer this jurisdiction.

REPEAL. Section 13 of the act is broad enough to and does repeal "all other Acts and parts of Acts in so far as they are embraced within and superseded by this Act, or are inconsistent therewith". This would repeal, if it existed, that portion of the Act of 1923, Sec. 201 (c), *in so far* and so far *only* as the term jurisdiction is used in a wider sense than venue or location of suit. And would leave it in force to that extent.

8. *U. S. Code*, 1925. It is suggested in the opinion of Circuit Judge Parker (opinion, p. 7) that the re-enactment or carrying forward in the new Code of Section 201, sub-section (c) is evidence that this section is still the law. It is *prima facie* or presumptive evidence that the section is still the law. But the Act of June 30, 1926, Public No. 440, enacting the Code, provides that the matter set forth in it shall establish *prima facie* the laws of the United States, and "In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code and the corresponding portion of legislation heretofore enacted, effect shall be given for all purposes whatsoever to such enactments."

This, we respectfully submit, leaves the Federal Intermediate Credit Bank Act, Sec. 201, Sub-sec. (c), to stand with and be limited and qualified by the Act of

1925, 43 Stat. L. 936, Sects. 12 and 13. See also Article by Frederic P. Lee and Middleton Beaman on Legal Status of the New Federal Code, American Bar Assoc. Journal for December, 1926.

We again reiterate that the only method of reconciling these statutes and the new Code and the decisions and Rules of Interpretation above referred to, is by limiting the word "jurisdiction" in the manner we have above pointed out.

Respectfully submitted,

RANDOLPH MURDAUGH,
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Attorneys for Petitioner.

FILED

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. 454.

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA, Petitioner,

vs.

CHAS. S. MITCHELL, W. H. RICHARDSON, TRUCKERS SUPPLY COMPANY, and SOUTH CAROLINA AGRICULTURE CREDIT COMPANY, Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

BRIEF FOR PETITIONER.

S. E. WEAVER,
Solicitor for Petitioner,
S. W. Sanders,
Attorneys for Petitioner.

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This action was commenced by the Federal Intermediate Credit Bank of Columbia, which is situated in the Eastern District of South Carolina against the defendants named in the title, each and all of whom are citizens and residents of the same District, on several promissory notes, involving more than three thousand ($3,000.00) dollars. (R. 2-6).

The defendant, C. S. Mitchell (the other defendants not appearing), answered admitting plaintiff's incorporation under Act of Congress of 1923, the residence of the parties and the amount in controversy. (R. 8-9).

And for a further answer, pp. 9-10, par. 12, denies the jurisdiction of the District Court. And this question was decided by both the lower courts adverse to our claim.

ISSUE.

The only question involved in this case is whether or not the United States District Court has jurisdiction of an action brought by a Federal Intermediate Credit Bank, where the requisite amount is involved, solely by reason of the fact that the Bank is chartered and incorporated under an Act of Congress and its capital stock is furnished and owned entirely by the United States Government. Assignment of Errors 1 and 2 (R. 32-3).

SUMMARY.

The decision in this case turns upon the construction of Section 201-(c) of the Act creating the Federal Intermediate Credit Banks, enacted in 1923, 42 Stat. L. 1454; U. S. C., Title 12, Sec. 1023, which reads:

> Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of **jurisdiction** shall be deemed **a citizen of the State where** it is **located.**

Our position is:

I. That the latter clause of the paragraph means when **jurisdiction** in any Court (State or Federal) is **dependent** on **citizenship,** then the **citizenship (residence)** is to be the State in which the bank is **located.** It has **nothing whatever to do with that clause** of the statute providing for jurisdiction in the Federal Court where the **cause of action arises under a Federal law.**

II. The Act of 1925, 43 Stat. L. 941, U. S. C., Title 28, Section 42, amending the Judicial Code and taking away jurisdiction from the Federal Courts of corporations created by Acts of Congress, saving and excepting corporations in which the Government owns more than fifty per cent. of the stock, and section 13 of the same act repealing "all other Acts and parts of Acts in so far as they are embraced within and superseded by this Act or are inconsistent therewith," is entirely consistent with this construction, and not with any other; and leaves this purely Federal institution with the right to invoke and use the Federal Courts in the enforcement and protection of its rights—a right which may be of the greatest value at times.

ARGUMENT.

I.

The Federal Farm Loan Act was enacted July 17, 1916, 39 Stat. L. 360, U. S. C., Title 12, Sec. 641, etc., and under this Act twelve Farm Land Banks were established in different parts of the United States.

The Act was amended in 1923 so as to provide for Federal Intermediate Credit Banks located with and under the same management as the several Land Banks, 42 Stat. L. 1454, etc., U. S. C., Title 12, Sec. 1021, etc., and under Sect. 205 of the Act (U. S. C., Title 12, Sect. 1061) the

capital stock of each such bank is fixed at five million ($5,000,000.00) Dollars **"and shall be subscribed, held and paid for by the Government of the United States."**

The Federal Intermediate Credit Bank of Columbia, S. C., was established and located there for, and serves, the States of North Carolina, South Carolina, Georgia and Florida.

1. We respectfully submit that both of the Courts below attached too much importance to the words in the Act of 1923, "be deemed a citizen of the State," and in tracing the similarity of this language to similar words in the Statutes pertaining to National Banks, (and excluding jurisdiction of such banks, because of their Federal incorporation), and the construction put upon these National Bank Acts in *Hermann vs. Edwards*, as will be seen below under our argument at pp. 9-12; and in ignoring the line of authorities and reasoning of this Court in reference to jurisdiction of Federal Reserve Banks which were more closely akin to the Federal Intermediate Credit Banks, and more applicable to our Case.

2. **General Rule**. From the earliest times this Court has held that Congress could vest jurisdiction in its Courts of and over any corporation which was created by it, upon the ground that any action by or against it was one arising under the laws of the United States; and in 1875 Congress passed a general act making this a subject for Federal jurisdiction. Since that time this has been the uniform construction, "save where the particular suit was withdrawn or excluded from that jurisdicton by some **specific enactment."** Rose's Fed. Jurisdiction & Procedure, 3rd ed. p. 235, Sect. 238; Simpkins Fed. Practice (Rev. Ed.) p. 401; *Osborne vs. Bank*, 9 Wheat. 805, 808, 819, 822-3; 6 L. Ed. 220, 224, and cases in Rose's Notes, pp. 149, 169; *Bankers Trust Co. vs. Tex. & P. R. Co.*, 241 U. S. 306-7; 60 L. Ed. 1014-15; *Amer. Bank & Trust Co. vs.*

Federal Reserve Bank, 256 U. S. 356-7:65 L. Ed. 989; *Petri vs. Commercial Natl. Bk.* 148 U. S. 648:35 L. Ed. 1144; *Toledo Fence & Post Co. vs. Lyons*, 290 F. 641-4 (6th C. C. A.); *Sowell vs. Fed. Reserve Bank*, 268 U. S. 453-6:69 L. Ed. 1047-9. Judicial code, Sec. 24, and (a) under first sub-section, now U. S. C. Title 28, Sec. 41 (1), (a).

And the same rule and the same law applies where a subsidiary corporation is chartered by another which derived its authority to act as a corporation and to charter the subsidiary from an Act of Congress. *Rosenberg vs. U. S. Shipping Board Emergency Fleet Corp.*, 271 Fed. 956.

We ask the Court's attention to the following language of Mr. Justice Holmes in *American Bank & Trust Co. vs. Federal Reserve Bank*, cited above:

> We agree with the Court below that the removal was proper. The principal defendant was incorporated under the laws of the United States, and that has been established as a ground of jurisdiction since *Osborne vs. Bank of United States*, 9 Wheat. 738, 6 L. Ed. 204; Pacific R. Removal Cases, 115 U. S. 1, 29 L. Ed. 319, 5 Sup. Ct. Rep. 1113; *Re Dunn*, 212 U. S. 374, 53 L. Ed. 558, 29 Sup. Ct. Rep. 299. We shall say but a word in answer to the appellant's argument that a suit against such a corporation is not a suit arising under those laws, within Sect. 24 of the Judicial Code of March 3, 1911, chap. 231, 36 Stat. of L. 1087, Comp. Stat. 99 (2), 4 Fed. Stat. Anno. 2d. ed. p. 838. The contrary is established, and the accepted doctrine is intelligible, at least, since it is part of the plaintiffs' case that the defendant bank existed and exists as an entity, capable of committing the wrong alleged, and of being sued. These facts depend upon the laws of the United States. *Bankers Trust Co. vs. Texas & P. R. Co.*, 241 U. S. 295, 306, 307, 60 L. Ed. 1010, 1014, 1015, 36 Sup. Ct. Rep. 569; *Texas & P. R. Co. vs. Cody*, 166 U. S. 606, 41 L. Ed. 1132, 17 Sup. Ct. Rep. 703, 1 Am. Neg. Rep. 763. See further *Smith*

> *vs. Kansas City Title & T. Co.*, February 28, 1921 (255 U. S. 180, ante, 577, 41 Sup. Ct. Rep. 243.) A more plausible objection is that by the Judicial Code. Sect. 24, sixteenth, except as therein excepted, national banking associations for the purpose of suits against them, are to be deemed citizens of the states in which they are respectively located. But we agree with the court below that **the reasons for localizing ordinary commercial banks do not apply to the Federal reserve banks created after the Judicial Code was enacted, and that the phrase, "National Banking Associations" does not reach forward and include them.** That phrase is used to describe the ordinary commercial banks, whereas the others are systematically called "Federal reserve banks." **We see no sufficient ground for supposing that Congress meant to open the questions that the other construction would raise.**

In the Sowell case one of the main questions was whether or not the clause of the judiciary Act, Sec. 24, first sub-section immediately after the clause (c) giving jurisdiction of actions between citizens of a state and foreign states, citizens or subjects, which prohibited any District Court from taking jurisdiction of an action on a note or other chose in action in favor of an assignee, where the said action could not have been brought in that Court if no assignment had been made, was applicable to a suit against Federal Reserve Bank. In this case the Court said:

> It is unquestioned that where the **sole ground of jurisdiction** is **diversity of citizenship,** such jurisdiction is excluded by the operation of this clause, and the question now presented is whether the clause has a like effect where the sole ground of jurisdiction is that the suit arises under the laws of the United States.

And after discussing the origin of this assignee clause tracing it back to the Act of ~~1879~~ 1789, says:

But the Bank does not sue in virtue of any right conferred by the Judiciary Act, but in virtue of the right conferred by its charter. It does not sue because the defendant is a citizen of a different state from any of its members, but because its charter confers upon it the right of suing its debtors in a circuit court of the United States. * * *

By the Act of (March 1), 1875, (18 Stat. at L., 336, Chap. 114. Comp. Stat. Sect. 3926), jurisdiction of the Federal courts was extended generally to all suits arising under the laws of the United States. Where such is the ground of jurisdiction, the assignee clause appears to us to be inapplicable, just as it had been held to be in cases in which the like jurisdiction was conferred by special corporate charter provisions, or where jurisdiction was given generally over suits brought by the United States.

The precise question seems not to have been expressly passed upon by this Court since the Act of 1875. It, however, was necessarily involved in *Wyman vs. Wallace*, 201, U. S. 230, 50 L. Ed. 738, 26 Sup. Ct. Rep. 495, in which the assignee clause would have defeated the jurisdiction attaching because of diversity of citizenship, but in which the jurisdiction was nevertheless upheld because the case was one arising under a law of the United States.

We think that a **reasonable interpretation of the language of the clause in the light of its history,** its obvious purpose at the time of its enactment, and judicial declarations as to its meaning and effect, and the fact that the provisions for jurisdiction generally over suits arising under the laws of the United States was enacted later, and without any exceptions, lead to the conclusion that it should be so applied **as not to limit jurisdiction arising from the nature of the subject-matter of the suit, as is the case in suits brought by or against corporations organized under the laws of the United States.**

3. **Exceptions.** A number of acts have been passed since the general statute of 1875, limiting the Federal jurisdiction and taking it away in various cases:

(1) As to National Banks:—Act of 1882, 22 Stat. L. 162-3, which reads, among other things: **"The jurisdiction for suits hereafter brought by or against** * * * National Banking Associations, **except suits between them and the United States** * * * shall be **the same as and not other than,** the jurisdiction for suits by or against banks **not organized under any laws of the United States.** * * *."

Act of 1888, 25 Stat. L. 436, provides "that all National Banking associations * * * **for the purposes of all other actions by or against them** * * * be deemed **citizens of the states** in which they are respectively **located; and in such case the Circuit and District Courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state."**

Then follows a proviso that it shall not affect the jurisdiction of the United States Courts in certain classes of cases.

Judicial Code, Sec. 24, Sub-sect. Sixteenth, U. S. C., Title 28, Section 41, Subd. (16), under the title "Suits Against National Banking Associations" confers upon the United States Courts jurisdiction of certain suits commenced by it or its officers against National Banks, and of certain suits by National Banks against the Comptroller, and then provides: "And all National Banking Associations established under the laws of the United States shall, **for the purposes of all other actions by or against them,** * * * **be deemed citizens of the states in which they are respectively located."**

(a) *Hermann vs. Edwards,* 238 U. S. 111-12, 113, 116-18:59 L. Ed. 1227-9.

The District Court and the Circuit Court of Appeals, in the majority opinion, relied largely upon the decision in this case in construing the statute before it. We submit

that a careful study of the Hermann case will show that it was based largely upon the explicit wording of the statutes of 1882 and 1888, just above quoted, and the interpretation which had been given to these statutes and had become a part of the fixed law in regard to National Banks. That the present case should be and can be differentiated from that.

And that the Courts in our case have failed to note the important difference between the wording of the Acts as to National Banks and that referring to jurisdiction in the Federal Intermediate Credit Bank Act.

The Hermann case was commenced in the Court below in March, 1913, pp. 113-14, and was decided in 1915. The Court considered the original Statutes of 1882 as not repealed, but as in fact still in force, constituting and to be construed with the Act of 1888 and the Judicial Code of 1911, each of the later Acts to be considered and construed with the earlier. The opinion was delivered by the late Chief Justice White and we call attention of the Court to the following language:

> Under the provisions of the Act of 1882, long prior to their re-enactment in 1888, it had been conclusively established that because a corporation was a national bank, created under an Act of Congress, gave it no greater right to remove a case than if it had been organized under a state law. *Leather Mfrs.' Nat. Bank vs. Cooper*, 120 U. S. 778, 30 L. Ed. 816, 7 Sup. Ct. Rep. 777. And after the **re-enactment in 1888** a case (*Whittemore vs. Amoskeag Nat. Bank*, 134 U. S. 527, 33 L. Ed. 1002, 10 Sup. Ct. Rep. 592) was decided involving a controversy controlled by the Act of 1882, but the decision of which was necessarily also an interpretation of the Act of 1888, as the two were identical. * * * The circuit court, not passing upon these questions, dismissed the bill because there had not been a compliance with equity rule 94. But this court concluding that the Act of 1882 excluded jurisdiction as a Federal Court, the action of the court below in

dismissing for want of compliance with the equity rule was reversed and the case remanded with directions to dismiss for want of jurisdiction as a Federal Court. Of course this conclusion involved deciding that, in the absence of a Federal controversy concerning the interpretation of some provision of the national bank act raising what might be considered by analogy a Federal question in the sense of §709, Rev. Stat., **a mere assertion of liability on the part of directors for wrongs for which they might be responsible at common law afforded no basis for jurisdiction.** * * *

This ruling during the many years which have elapsed has never been questioned and the fundamental principle upon which it rested has been applied in various aspects. *Petri vs. Commercial Nat. Bank*, 142 U. S. 644, 35 L. Ed. 1144, 12 Sup. Ct. Rep. 325; *Ex Parte Jones*, 164 U. S. 693, 41 L. Ed. 601, 17 Sup. Ct. Rep. 222; *Continental Nat. Bank vs. Buford*, 191 U. S. 119, 48 L. Ed. 119, 24 Sup. Ct. Rep 54; *Yates vs. Jones Nat. Bank*, 206 U. S. 158, 51 L. Ed. 1002, 27 Sup. Ct. Rep. 638; *Thomas vs. Taylor*, 224 U. S. 73, 56 L. Ed. 673, 32 Sup Ct. Rep. 403. * * *

The statutory law with the concluded interpretation affixed to it, to which we have referred, being in force, this suit was commenced in the Court below in March, 1913. * * *

It is apparent that the general statements made in the bill to the effect that Federal considerations were essential to the determination of the cause of action were but conclusions of law affording no jurisdiction apart from the right to entertain the cause which would arise from the substantive and essential facts upon which the bill was based. Indeed, when the averments of the bill are analyzed there is no escape from the conclusion that the **jurisdiction to entertain it could not have been exerted without disregarding the plain letter of the statute in force since 1882.** In fact, this inevitable result does not depend upon the mere text of the statutes referred to, since there is an absolute legal identity between this and the Whittemore Case, and that case hence forecloses every contention here relied upon. * * *

> In **re-enacting** these provisions of the Act of 1888 in paragraph 16, of Sec. 24 of the Judicial Code, obviously to make the **purpose of the re-enacted statute clearer,** just the opposite form of statement was resorted to, since paragraph 16 opens by conferring Federal jurisdiction only in those classes of cases which were kept within that jurisdiction by the concluding clause of **Sec. 4 of the Act** of 1888, and hence no jurisdiction was given as to the other classes of cases which were excluded from such jurisdiction by the Act of 1888. The re-enacted section, in other words, instead of generally stating what was excluded from jurisdiction and then carving out exceptions, as was done in the Act of 1888, gave jurisdiction only in the cases where it was intended to give it, and then proceeded to declare that **in all other cases within the contemplation of the section there should be no jurisdiction, thus making the lines clear and broad and leaving no room for controversy or doubt.** Aside from this, it is to be moreover observed that the **intention of Congress to make by the adoption** of the Judicial Code so radical a change from the rule which had prevailed for so long a period **is not to be indulged in without a clear manifestation of such purpose.**

The correctness of this interpretation (that the Code of 1911 is to be considered frequently as a mere re-enactment of existing Acts) is borne out by a later decision from this Court, construing another Act embraced in the Judicial Code, to-wit, *Street & Smith, vs, Atlas. Mfg. Co.*, 231 U. S. 351, 353: 58 L. Ed. 263-4, where the Court, speaking by Mr. Justice Van Devanter, says, at p. 351:

> The Code does not purport to embody all the laws upon the subjects to which it relates. It contains some new provisions and some that are modifications of old ones; but much of it is merely a re-enactment of prior laws with appropriate regard to their proper classifications and orderly arrangement. Among others, it contains the following provisions bearing upon the extent to which it was intended to affect or repeal prior laws:

Then follows quotations from sections 292, 294, 297; and then the Justice calls attention to the fact that certain sections of the Code substantially, almost literally repeat the provisions of the Circuit Court of Appeals, Act of March 3, 1891, and continues further at p. 353:

> The provisions of the act upon this subject are not among those enumerated in § 297 of the Code as thereby repealed, and neither do they appear to have been embraced within and superseded by the Code. And while the circuit courts of appeals Act, to which § 18 of the act of 1905 makes reference, has been superseded by being incorporated into the Code, that section has not thereby lost any of its original effect, for § 292 of the Code requires the reference to be construed as if naming the very sections of the Code into which the circuit courts of appeals Act has been carried.

And Sec. 294 of the Judicial Code, reads:

> The provisions of this Act, so far as they are substantially the same as existing statutes, shall be construed as continuations of and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intention shall be clearly manifest.

With this clear and explicit statutory language and the line of previous decisions before it, we do not see how the Court could have reached any other conclusion than it did in *Hermann vs. Edwards*, but, we respectfully submit, it is not applicable to the case at Bar.

(b) **Citations of Herman vs. Edwards:** The only cases in which we can find *Hermann vs. Edwards* cited since, are: *Chesbrough vs. Woodworth*, 244 U. S. 78-9:61 L. Ed. 1005; *Toledo Fence & Post Co. vs. Lyons*, 290 F. (6 C. C. A.) 644; *Davis vs. McFarland*, 15 F. (2d), (C. C. A. Tex.) 613; *Fed. Reserve Bk. of Dallas vs. Webster*, 287 F. (D. C. Tex.)

586; *Wegman vs. Hulse*, 13 F. (2d), (D. C., W. D. N. Y.) 208.

A reference to these cases will show, we think, that the case has never been invoked as an authority for the purpose for which it is now used. In the Chesbrough case, the Court held that a question arising under a law of the United States was involved giving a Federal District Court jurisdiction **without regard to citizenship,** in an action to enforce the personal liability of directors of a National Bank under Acts of Congress, for damages suffered by one who had purchased capital stock in such bank in reliance upon false reports of the bank's financial condition to the Comptroller of the Currency, attested by them; and referring to the Hermann case, Mr. Justice McKenna, speaking for the Court, uses this language:

> Necessarily a Federal question is involved and there was jurisdiction in the courts below. Sec. 5198, Rev. Stat. (Comp. Stat. 1916, Sec. 9759); Sec. 4 of the Act of August 13, 1888, 25 Stat. at L. 436, Chap. 866, *Herman vs. Edwards*, 238 U. S. 107, 59 L. Ed. 1224, 35 Sup. Ct. 839, is not opposed to this view. It was there **held only that the Federal cause of action should be, in the absence of diverse citizenship, stated in the bill** to give the Federal Court jurisdiction—a condition that is complied with by the declaration in the present case.

Toledo Fence & Post Co. case was a suit by a Trustee in Bankruptcy, the court holding that where the Bankruptcy Act conferred on a Trustee the right to sue, such a suit arises under the Act and is within the jurisdiction given to Federal Courts, subject to the limitations imposed by the Act itself, the Court saying among other things:

> From this review we are compelled to think that, if there were no restrictive provisions in the Bankruptcy Act, the Federal Courts would have that measure of jurisdiction over suits by a trustee to recover

> debts due the bankrupt, which is given by section 24 of the Code as to suits arising under the laws of the United States.

And then speaking of the limitations and exceptions, says:

> For example, it has taken away by amendment to Sec. 24 (1), the power which that section formerly granted as construed in Pacific Railway Cases, * * *. Cases like *Hermann vs. Edwards*, 238 U. S. 107:59 L. Ed. 1224, are not inconsistent with, and indeed rather imply the idea that there would be Federal Court jurisdiction except for the restrictive provisions which such cases interpret and apply.

Davis vs. McFarland was a suit brought by a citizen of Texas against the directors of a Bank for violation of the Federal statute in making excessive loans, and it was held that the Court did not have jurisdiction where the plaintiff's share of alleged damage resulting from an excess loan amounted to less than $3,000.00, although the right asserted arose under a law of the United States. The Court, in referring to the Hermann case, simply stated:

> The Court did not have jurisdiction because a National Banking Association was a party sued.

Citing the Herman case and *Whittemore vs. Amoskeag Bank*, 134 U. S. 527:33 L. Ed. 102.

Federal Reserve Bank of Dallas vs. Webster, was a case involving the assignee clause of the Judiciary Act, very much like the Sowell case. The Court, in discussing the question of jurisdiction of suits that arise under the laws of the United States, at p. 584, says:

> This jurisdiction will not be held to be taken away by any subsequent words of the statute, although appropriate for the purpose, **unless it shall clearly appear that such was the manifest intent of Congress.**

And at p. 586 mentions the case of *Herman vs, Edwards,* quoting the very language which we have quoted (above at p. 11), from pp. 117-18 of the official report, L. Ed. p. 1229, and further stating:

> The meaning of the "assignee clause," as it existed in the original Judiciary Act and ever since and up to and including the Act of 1888, as judicially interpreted is too well settled to admit the possibility of a successful contention that the mere re-arrangement of it in the Judicial Code was designed by Congress to operate such a radical change in its meaning as contended for by the defendant.

Wegman vs. Hulse was a decision by the District Court for the Western District of New York, holding that such Courts had jurisdiction of suits by National Banks to enjoin the Comptroller or any Receiver from making an alleged collusive compromise of a suit against the Directors, and referring to the Hermann case the Court says:

> The case of *Hermann vs, Edwards,* * * * is not in point. Plainly no Federal question was involved. It was a suit brought by a stockholder of a National Bank against the Bank and another bank and its officers and directors, to recover for fraudulent sale of property by the first mentioned Bank to the latter.

(2) **Railroads.** By Act of January 28, 1915, 38 Stat. L., p. 804, Congress took from the Federal Courts jurisdiction of railroad corporations chartered by the United States in the following language:

> **No Court of the United States** shall have jurisdiction of any action or suit by or against any Railroad Company **upon the ground that said Railroad Company was incorporated under an Act of Congress.**

(3) **Federal Employers' Liability Act.** By the amendment to this Act in 1910, 36 Stat. L. 291, Ch. 143; U. S. C. Title 45, Sect. 56, Congress provided:

> The jurisdiction of the Courts of the United States under this Act shall be concurrent with that of the Courts of the several states, and **no case arising under this Act** and brought in any State Court of competent jurisdiction shall be removed to any Court of the United States.

(4) **All Corporations.** By Sec. 12 of the Act of 1925, 43 Stat. L. 941, U. S. C. Title 28, Sec. 42, it was provided:

> **No district court** shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: Provided, That **this section shall not apply** to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress **wherein the Government of the United States is the owner of more than one-half of its capital stock.**

4. **Acts ousting or taking away jurisdiction are to be strictly construed and should be clear and explicit.** This is demonstrated by the Acts of Congress which we have cited under (1-4) above at pages 8, 15; 16 of this argument, and by the cases which we have cited above, particularly the language quoted above at pages 5-6 from *American Bk. & Tr. Co. vs. Fed. Reserve Bk;* at p. 6-7 above from *Sowell vs. Fed. Res. Bk.;* at pp. 9-11 above from *Hermann vs. Edwards;* and at pp. 14-15 above from *Fed. Reserve Bank vs. Webster.* We add also Endlich on Interpretation of Statutes. Sec. 151. Sec. 155; *Davis vs. Slocum*, 263 U. S. 161:68 L. Ed. 228; *Emlenton Refining Co. vs. Chambers*, 14 F. (2d) (C. C. A., Pa.) 105; *U. S. vs. Barnes*, 222 U. S. 520:56 L. Ed. 293; *Anderson vs. Pac. Coast Steamship Co.*, 225 U. S. 198-9:56 L. Ed. 1052-3.

5. **Reason.** It is often said that we should not attempt to find a reason for a statute, but it is to be noted that the Courts constantly violate this rule in interpreting

statutes, and this is particularly true in the decisions from which we have quoted above (under 1, 2), at pages 5-6, 7, 11 of this argument.

Adopting, and to some extent paraphrasing the ideas expressed by this Court in some of these cases, the reasons for localizing National Banks owned by individuals and located to serve particular communities of larger or smaller size, do not apply to Federal Intermediate Credit Banks owned by the Government itself and serving a large territory embracing a number of states and a still larger number of United States Districts. A reasonable interpretation of the language of Sec. 201 (c), U. S. C. Title 12, Sec. 1023 ,would not limit and exclude the jurisdiction of the Federal Courts, belonging to the same Government which owned the bank. Indeed, it would be an anomaly if a government should establish, own and control an institution, and, as it were, take away from its own courts, (in many cases when most needed) jurisdiction to hear controversies concerning it. And adopting the sentiments in the Hermann case, "The intention of Congress to make * * * so radical a change from the rule which had prevailed for so long a period is not to be indulged in without a clear manifestation of such purpose."

The Federal Intermediate Credit Bank was and is a new experiment in the realm of banking in this country. It is intended to furnish credit to farmers with which to make crops. Because it was an experiment the Government itself ventured the investment of its own funds. There are only twelve of them, and we respectfully submit the intention to oust the Government's own Courts of jurisdiction is not to be presumed.

6. **Venue—Difference in Phraseology.** We submit the Intermediate Credit Bank Act uses the word **"jurisdiction"** in Section 201-(c) in the sense of **Venue** where it is a question of **locality** in which to sue or be sued. We call

attention here to the language of the Act of 1888 in regard to National Banks and the language of Sec. 24, sixteenth, of the Judicial Code, U. S. Title 28, Sect. 41, Subd. (16), which is omitted from the Federal Intermediate Credit Bank Act. This language is, **"for the purposes of all other actions by or against them."**

These words are, we think, significant, and would seem to cover, and to have been intended to cover, the entire field of jurisdiction. And the omission of these words from the Intermediate Credit Bank Act would certainly lend color to the suggestion that jurisdiction was not used in its broadest sense.

Its meaning is to be limited and interpreted by the words which follow, particularly **"citizen"** and **"located,"** and so limited means that when the question arises in what particular local Court (State or Federal) suit is to be brought by or against such banks, they are deemed **citizens** of the State where **located. And so limited it does not refer to or interfere with jurisdiction conferred by Judicial Code, Sect. 24, 1 a., U. S. Code Title 41 (1)** (a), **where the case arises under the Constitution or laws of the United States.**

It is important to know where the residence of a defendant is when it comes to the question of what Court of a State or of the United States he or she should or can sue or be sued in. Judicial Code, Sec. 51, U. S. C., Title 28, Sec. 112.

There are many cases that arise and will arise involving the questions of jurisdiction fixed or determinable under this provision of the Code, and we believe that it was important and necessary to locate a residence or home for these different Intermediate Credit Banks in order to meet the requirements of this section of the U. S. Code, *Macon Gro. Co. vs. A. C. L.*, 215 U. S. 501:54 L. Ed. 300; as also requirements of State laws.

This interpretation of the statute does no violence to it, and furnishes a sound reason for it. The interpretation adopted by the lower Courts is certainly not reconcilable with sound reason, and if it be the correct interpretation, then this statute has ousted jurisdiction in many cases without doing so in explicit language as has been the rule in all statutes heretofore on kindred subjects. And the Government has barred the door of its own Courts against its child in many cases where the child may most need this refuge.

II.

The Act of Feb. 13, 1925, 43 Stat. L. 936, purports to be "an Act to amend the Judicial Code, and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for other purposes." Its Section 12, now embodied in the Code, Title 28, Sec. 42, in clear and explicit language, takes from any District Court jurisdiction of any action against any corporation where it is founded on the ground that such corporation owes its existence to any Act of Congress. This is the culmination of the Acts taking away jurisdiction of the Federal Courts of corporations, which these Courts had under the Act of 1875. And it is contained in an amendment to the Judicial Code.

But the sweeping clause contained in the first portion of the paragraph is followed by a proviso expressly excepting from the provisions of the Act "any suit, action or proceeding brought by or against a corporation incorporated by or under an Act of Congress **wherein the Government of the United States is the owner of more than half of its capital stock.**" This proviso covers and embraces fully, clearly and explicitly our case.

It is further to be noted that this Section 12 of the amending Act is followed by Section 13, which after enumerating

numerous sections of the Judicial Code and Statutes (but not including Sec. 201-(c) of the Act of 1923) as repealed thereby, contains the sweeping clause: "All other Acts or parts of Acts in so far as they are embraced within a. superseded by this Act, or are inconsistent therewith." This is certainly wide enough to sweep out that portion of Section 201-(c) of the Act of 1923, which is inconsistent with it if interpreted as has been done by the Courts below in this case.

We are told by the learned Circuit Judge who wrote the opinion for the majority, that this act of 1925 and the Act of 1923, 201-(c), are both in our present Code, and this is true, and this shows an intent to leave both as the law. It is certain that the authors of the Code were conscious of the fact that it might not be entirely perfect when subsequently tried out; for it is provided in the enacting paragraph under Sec. 2-(a): "In case of any inconsistency arising through omission or otherwise between the provisions of any sections of this Code, and the corresponding portion of legislation heretofore enacted, effect shall be given for all purposes whatsoever to such enactments."

Giving to Sec. 201-(c) the construction for which we contend above under I, there is no real inconsistency between the two sections now embodied in one Code. With the highest regard for the writer of the opinion in C. C. A., we believe that opinion makes a marked inconsistency between the two acts and deprives the petitioner of a valuable right, which the proviso to Act of 1925 intended almost specifically for it.

With our construction we have a Government investing its own funds and property in its own creature, and leaving that creature for the most part with the privilege of entering its own Courts for protection or enforcement of its rights.

We have the **venue, habitat** or **citizenship** of that crea-

ture fixed for the purposes of knowing where to bring a suit by or against it.

Respectfully submitted,

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Attorneys for Petitioner.

APPENDIX.

MATERIAL EXTRACTS FROM STATUTES.

1. National Bank Acts.

Act of 1882, 22 Stat. L. 162-3:

"the jurisdiction **for suits hereafter brought by or against** any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such national banking associations may be doing business when such suits may be begun."

Act of 1888, 25 Stat. L. 436:

"That all national banking associations established under the laws of the United States shall, for the purposes **of all other actions by or against them,** real, personal, or mixed, and all suits in equity, **be deemed citizens of the states** in which they are respectively located; and in such cases **the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state.** The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction ot any officer thereof, or cases for winding up the affairs of any such bank."

Judicial Code enacted 1911, Sec. 24, 16th, U. S. C. Title 28, Sect. 41, Subd. (16):

Of all cases commenced by the United States, or by direction of any officer thereof, against

any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, **for the purposes of all other actions by or against them,** real, personal, or mixed, and all suits in equity, **be deemed citizens of the States** in which they are respectively located. (See Sects. 49, 64).

2. Federal Intermediate Credit Bank Act.

Act of March 24, 1923, 42 Stat. L. 1454, Sec. 201 (c);

U. S. C. Title 12, Sect. 1023:

"Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of **jurisdiction** shall be deemed **a citizen of the State where** it is **located."**

42 Stat. L. 1457, U. S. C., Title 12, Sec. 1061:

"Amount; shares; subscription to by United States. For the purpose of exercising the powers conferred by this chapter, each Federal Intermediate Credit Bank shall have a subscribed capital stock of $5,000,000. Capital stock of such amount shall be divided into shares of $5 each and shall be subscribed, held, and paid by the Government of the United States. It shall be the duty of the Secretary of the Treasury to subscribe to such capital stock on behalf of the United States, such subscription to be subject to call in whole or in part by directors of the said banks upon thirty days' notice to the Secretary of the Treasury and with the approval of the Federal Farm Loan Board. The Secretary of the Treasury is authorized and directed to take out shares as called

and to pay for the same out of any money in the Treasury not otherwise appropriated. (March 4, 1923, c. 252, Title I, Par. 2, 42 Stat. 1457)."

3. Railroads.

Act of January 28, 1915, 38 Stat. L. 804 takes away jurisdiction in the following language:

> **"No court** of the United States **shall have jurisdiction of any action or suit by or against any Railroad Company upon the ground that said Railroad Company was incorporated under an Act of Congress."**

4. All Corporations.

Act of February 13, 1925, 43 Stat. L. 941, Sec. 12, U. S. C., Title 28, Sect. 42:

> (District Courts—Jurisdiction of actions against Federal corporations.) **That no district court shall have jurisdiction** of any action or suit **by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: Provided,** That this section shall **not apply** to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the **Government of the United States is the owner of more than one-half of its capital stock.**

Does not apply that, to ~~effect~~ the power of 201(c) is to be limited in respect of the "product"

TABLE OF CASES.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 456.

(32,908)

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA, PETITIONER,

VERSUS

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, and SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

REPLY OR SUPPLEMENTAL BRIEF FOR PETITIONER.

We wish to add to our former brief the following extracts from decisions on

RULES AND CONSTRUCTION.

Cohens vs. Va., 6 Wheat, 354, 355, 357, 398, 399:5 L. Ed. 279, 289, 290.

In this case Mr. Pinckney, in his argument, says at p. 354, L. Ed. 279:

> It is an axiom of political science, that the judicial power of every government must be commensurate with its legislative authority; it must be adequate to the protection, enforcement and assertion of all the other powers of the government.

And again at p. 357, L. Ed. p. 279:

> The actual constitution of this country is not a government of confidence; it is a scheme of government conceived in the spirit of jealousy, and rendered adequate to all its own purposes, by its own means; and the judicial power of the Union is the principal means of giving effect to it. This it is which distinguishes it from the confederation. Experience has shown the necessity and wisdom of this provision.

The Court, in its opinion by Chief Justice Marshall, at p. 398, L. Ed. p. 289, says:

> It is, we think, apparent, that to give this distributive clause the interpretation contended for, to give to its affirmative words a negative operation, in every possible case, would, in some instances, defeat the obvious intention of the article. Such an interpretation would not consist with those rules which, from time immemorial, have guided courts, in their construction of instruments brought under their consideration. It must, therefore, be discarded. *Every part of the article must be taken into view, and that construction adopted which will consist with its words, and promote its general intention. The court may imply a negative from affirmative words, where the implication promotes, not where it defeats the intention.*

And again at p. 399, L. Ed. 290:

> "It is a maxim, not to be disregarded, *that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision.* The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

This last paragraph is reiterated and approved in *Downes vs. Bidwell*, 182 U. S. 258-9: 45 L. Ed. 1095, opinion delivered by Mr. Justice Brown.

Minneapolis & St. L. R. Co. vs. Bombolis, 241 U. S. 221-2:60 L. Ed. 965, opinion by Chief Justice White.

Moreover, the proposition is in conflict with an essential principle upon which our dual constitutional system of government rests; that is, that lawful rights of the citizens, whether arising from a legitimate exercise of state or national power, unless excepted by express constitutional limitation or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them.

Martin vs. Hunter's Lessee, 1 Wheat. 335-7:4 L. Ed. 105, opinion by Story, Judge.

The vital importance of all the cases enumerated in the first class to the national sovereignty, might warrant such a distinction. In the first place, as to cases arising under the constitution, laws, and treaties of the United States. *Here the state courts could not ordinarily possess a direct jurisdiction.* The jurisdiction over such cases could not exist in the state courts previous to the adoption of the constitution, and it could not afterwards be directly conferred on them; for the constitution expressly requires the judicial power to be vested in courts ordained and established by the United States. This class of cases would embrace civil as well as criminal jurisdiction, and affect not only our internal policy, but our foreign relations. It would, therefore, be perilous to restrain it in any manner whatsoever, inasmuch as it might hazard the national safety. The same remarks may be urged as to cases affecting ambassadors, other public ministers, and consuls, who are emphatically placed under the guardianship of the law of nations; and as to cases of admiralty and maritime jurisdiction, the admiralty jurisdiction embraces all questions of prize and salvage, in the correct adjudication of

which foreign nations are deeply interested; it embraces also maritime torts, contracts, and offenses, in which the principles of the law and comity of nations often form an essential inquiry. All these cases, then, enter into the national policy, affect the national rights, any may compromit the national sovereignty. The original or appellate jurisdiction ought not, therefore, to be restrained, but should be commensurate with the mischiefs intended to be remedied, and, of course, should extend *to all cases whatsoever.*

A different policy might well be adopted in reference to the second class of cases; for although it might be fit that the judicial power should extend to all controversies to which the United States should be a party, yet this power might not have been imperatively given, lest it should imply a right to take cognizance of original suits brought against the United States as defendants in their own courts. It might not have been deemed proper to submit the sovereignty of the United States, against their own will, to judicial cognizance, either to enforce rights or to prevent wrongs; and as to the other cases of the second class, they might well be left to be exercised under the exceptions and regulations which Congress might, in their wisdom, choose to apply. It is also worthy of remark that Congress seem, in good degree, in the establishment of the present judicial system, to have adopted this distinction. In the first class of cases, the jurisdiction is not limited except by the subject-matter; in the second, it is made materially to depend upon the value in controversy.

We do not, however, profess to place any implicit reliance upon the distinction which has here been stated and endeavored to be illustrated. It has the rather been brought into view in deference to the legislative opinion, which has so long acted upon, and enforced, this distinction. *But there is, certainly, vast weight in the argument which has been urged, that the constitution is imperative upon Congress to vest all the judicial power of the United States, in the shape of original jurisdiction, in the supreme and inferior courts created under its own authority.* At all events, whether the one construction or the other prevail, it is manifest that the judicial power of the United States is unavoidably, in some cases, exclu-

sive of all state authority, and in all others, may be made so at the election of Congress.

In construing a statute, the Court is not to look at any single phrase in it, but to its whole scope, in order to arrive at the intention of the makers of it. *Heydenfeldt vs. Mining Co.*, 93 U. S. 639-41:23 L. Ed. 966-7. In the opinion in this case, by Mr. Justice Davis, the Court says, in construing a statute:

> This interpretation, *although seemingly contrary to the letter of the statute, is within its reason and spirit.* It accords with a wise public policy, gives to Nevada all she had any right to ask for, and acquits Congress of passing a law which in its effects would be unjust to the People of the Territory. Besides, no other construction is consistent with the statute as a whole, and this alone answers the evident intention which the makers of it had in view, and this was to grant to the State in praesenti a quantity of lands equal in amount to the 16th and 36th sections; the grant to take effect when the status of the lands was fixed by survey, and they were capable of identification.

In *Church of the Holy Trinity vs. U. S.*, 143 U. S. 459-461:36 L. Ed. 228, Mr. Justice Brewer says:

> It is a familiar rule that a thing *may be within the letter of the statute and yet not within the statute, because not within its spirit,* nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act. As said in Plowden, 205: "From which cases it appears that the sages of the law heretofore have construed statutes

quite contrary to the letter in some appearances, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it; and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the *intent of the Legislature*, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances." * * * We cannot suppose such to have been actual intent. To adopt such a construction would put a stop to the ordinary business of life. The language of the Act, if construed literally, evidently leads to an absurd result. If a literal construction of the words of a statute be absurd, the Act must be so construed as to avoid the absurdity. The Court must restrain the words. The object designed to be reached by the Act must limit and control the literal import of the terms and phrases employed."

And the same opinion, quoting with approval from *U. S. vs. Kirby*, 74 U .S. 482, 486, says:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the Legislature intended exceptions to its language which would avoid results of this character. *The reason of the law in such cases should prevail over its letter.* The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The common sense accepts the ruling, cited by Plowden, that the statute of 1st. Edward II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burnt.'

Ozawa vs. U. S., 260 U. S. 194:67 L. Ed. 207, opinion by Mr. Justice Southerland, says:

> It is the duty of this court to give effect to the *intent of Congress.* Primarily this intent is ascertained by giving the words their natural significance; but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, *sacrificing, if necessary, the literal meaning* in order that the purpose may not fail. See *Church of the Holy Trinity vs. United States*, 143 U. S. 457, 36 L. Ed. 226, 12 Sup. Ct. Rep. 511; *Heydenfeldt vs. Daney Gold & S. Min. Co.*, 93 U. S. 634, 638, 23 L. Ed. 995, 996, 13 Mor. Min. Rep. 204. We are asked to conclude that Congress, without the consideration or recommendation of any committee, without a suggestion as to the effect, or a word of debate as to the desirability, of so fundamental a change, nevertheless, by failing to alter the identifying words of § 2169, which section we may assume was continued for some serious purpose, has radically modified a statute always therefore maintained and considered as of great importance. It is inconceivable that a rule in force from the beginning of the government—a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions—would have been deprived of its force in such dubious and casual fashion. We are, therefore, constrained to hold that the Act of 1906 is limited by the provisions of § 2169 of the Revised Statutes.

Fid. Sav. Co. vs. Fawcett, 22 F. (2d.) 591, Court of Appeals, D. C., opinion by Associate Justice Robb:

> Our duty is to give effect to the *intent of Congress*, and this intent is to be ascertained by giving to the words of the statute their natural significance, unless this would lead to an unreasonable result plainly at variance with the policy of the legislature. *Ozawa*

vs. United States, 260 U. S. 178, 194, 43 S. Ct. 65, 67 L. Ed. 199.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 456

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA, PETITIONER,

vs.

CHARLES S. MITCHELL, RESPONDENT.

BRIEF FOR THE RESPONDENT, CHARLES S. MITCHELL.

POINTS AND AUTHORITIES OF WILLIAM J. THOMAS AND BUIST & BUIST, ATTORNEYS FOR CHARLES S. MITCHELL, RESPONDENT.

Statement.

This matter comes up on writ of certiorari to the United States Circuit Court of Appeals, Fourth Circuit, to which this case had been brought by writ of

error to the United States District Court for the Eastern District of South Carolina. The district court dismissed the case for want of jurisdiction, on motion of the respondent, Charles S. Mitchell. The circuit court of appeals affirmed the district court by a divided court.

The only question before this Court is whether the district court had jurisdiction of this case on the ground of the existence of a Federal question. The right to invoke the Federal jurisdiction by reason of the existence of a Federal question is claimed by the petitioner on the ground that it is incorporated under an act of Congress.

The position of the respondent is that the jurisdiction of the Federal court is specifically excluded by the terms of the act under which the petitioner was created, and that no other act of Congress has nullified the expressed intention of the creating act.

The defendants below, W. E. Richardson, Truckers Supply Company, and South Carolina Agricultural Credit Company, failed to file answers, or otherwise appear, and are in default.

The decision in this case rendered in the circuit court of appeals is to be found in 21 F. (2d), 51.

ARGUMENT.

Point I.

The right to invoke Federal jurisdiction on the ground of Federal origin is subject to statutory limitation.

It was at an early date decided that actions by or against corporations created under authority of an act

of Congress were actions arising under the laws of the United States, and on the sole ground of their Federal origin such corporations can invoke Federal jurisdiction.

Osborne v. Bank of the United States, 9 Wheat., 738, 823.

Leather Manufacturers Bank v. Cooper, 120 U. S., 778, 781.

Pacific Railroad Removal cases, 115 U. S., page 1.

Texas, etc., Railroad Co. v. Cody, 166 U. S., 606.

Bankers Trust Co. v. Texas, etc., Ry., 241 U. S., 295.

American Bank, etc., Co. v. Federal Reserve Bank, 256 U. S., 350.

Sowell v. Federal Reserve Bank, 268 U. S., 449.

Simpkins Federal Practice 401.

25 *C. J.,* 735.

While the right to invoke Federal jurisdiction on the ground of Federal origin is a settled principle of our jurisprudence, it is one that has been gradually narrowed by legislative enactment.

In 1882 the general rule was abrogated as to National Banks. (Act of July 12, 1882; 22 Stat., 162, 163.)

In 1915 it was abrogated as to railroad corporations. (Act of January 28, 1915; 38 Stat., 804.)

In 1925 it was abrogated as to all corporations, except that the abrogating statute was limited so as not to apply to corporations in which the United States owns more than one-half of the capital stock. (Act of Feb. 13, 1925; 43 Stat., 941.)

The statute denying Federal jurisdiction on the ground of Federal origin to National Banks has undergone several changes of wording.

National Banks were first deprived of their right to invoke the jurisdiction of Federal courts on the ground of their Federal origin by the Act of July 12, 1882, which provided:

> "That the jurisdiction for suits hereafter brought by or against any association established under any laws providing for National Banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such National Banking associations may be doing business when such suits may be begun; and all laws, parts of laws of the United States inconsistent with this proviso be and the same are hereby repealed." (22 Stat., 163, and U. S. Comp. Stats., Section 9668.)
>
> *Leather Manufacturers Bank v. Cooper*, 120 U. S., 778.
>
> *Whittemore v. Amoskeag National Bank*, 134 U. S., 527.

The Act of August 13, 1888, provided:

> "That all National Banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, *be deemed citizens of the States in which they are respectively located;* and in

> such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States, or by the direction of any officer thereof, or cases for winding up the affairs of any such bank" (25 Stat., 436). (Italics ours.)

This statute apparently originated the expression that is under consideration in the case at bar. In *Ex parte Jones*, 164 U. S., 691, it was held that the effect of this statute was to deprive National Banks of the right to invoke Federal jurisdiction on the ground of Federal origin.

When the revision of the Judicial Code was effected by Act of March 3, 1911, the portion of the Act of 1888 above quoted was in part incorporated as subdivision 16, section 24, with the jurisdictional provision appearing in the following words:

> "And all National Banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal or mixed, and all suits in equity, *be deemed citizens of the States in which they are respectively located.*" (Italics ours.)

A construction was placed upon the foregoing section of the Act of 1911, by this Court in the case of *Herrmann v. Edwards*, 238 U. S., 107, and in that case the court considered whether or not the fact that sub-

division 16 of section 24 of the Act of 1911 omitted the amplifying phraseology of the Act of 1888, operated to restore to National Banks the right to invoke Federal jurisdiction because of their origin. The court held that by such omission the right was not restored to National Banks to invoke, on the grounds of their Federal origin, the jurisdiction of the Federal Courts.

The case of *Herrmann v. Edwards, supra,* was decided in 1915. Therefore, when in 1923, Congress came to consideration of creation of the Federal Intermediate Credit Banks, it was settled law that the words "be deemed citizens of the States in which located" were, by judicial construction, appropriate words to limit the power of Federal corporations to invoke jurisdiction of the Federal Courts solely on the ground of Federal origin.

> *Copper Queen, etc., Co. v. Arizona, etc.,* 206 U. S., 474.

Point II.

The act creating Federal Intermediate Credit Banks embraced a statutory limitation on their right to invoke Federal jurisdiction.

In 1923, Congress passed the act providing for the establishment of Intermediate Credit Banks (Act of March 24, 1923; 42 Stat., 1454; U. S. C. Title 12, Section 1023), and by a section of that act on the question of jurisdiction, it provided:

> "Each Federal Intermediate Credit Bank shall have all the usual powers of corporations,

> and shall have power to sue and be sued both in law and equity, and *for purposes of jurisdiction shall be deemed a citizen of the State where it is located.*" (Italics ours.)

Having adopted almost identically the same language with reference to jurisdiction of actions by or against Intermediate Credit Banks that had previously been enacted with reference to National Banks, and that had been judicially construed to deprive National Banks of the right to invoke Federal jurisdiction because of their Federal origin, it must have been the expectation and intention of Congress at the time of the passage of the Intermediate Credit Bank provisions that this wording would likewise deprive Intermediate Credit Banks of the right to invoke Federal jurisdiction solely on the ground of their Federal origin.

Therefore, the conclusion seems incontrovertible that Congress by importing into the Intermediate Credit Bank Act a phrase, taken bodily from the National Bank jurisdictional provision of the Judicial Code, intended to accomplish in the later act the same result that had been accomplished in the earlier act by that phrase, to wit, an avoidance of Federal jurisdiction based on Federal origin. If this were not the purpose of Congress it is difficult to conceive what was its purpose in appropriating this wording from the National Bank provision.

The Learned Circuit Judge, who dissented in the court below, apparently reached the conclusion that the Act of 1923 by its terms negatived the right of Federal Intermediate Credit Banks to invoke Federal

jurisdiction; because, unless he had reached this conclusion, it would have been unnecessary for him to base his findings of law upon an interpretation of the Act of 1925. Therefore, even under the doctrine of the dissenting opinion below, there was no Federal jurisdiction of these corporations between March 24, 1923, and February 13, 1925.

It would be a juridical anomaly to construe an identical phrase as having one meaning in one statute relating to one class of banks, and a different meaning in aother statute relating to another class of banks.

Point III.

The limitation originally imposed upon the right of Federal Intermediate Credit Banks to invoke Federal jurisdiction has not been revoked, either expressly or impliedly, by any subsequent legislation.

Assuming that it was the expressed intention of Congress when passing the Intermediate Credit Bank Act to deny the right to such corporations to invoke Federal jurisdiction because of Federal origin, it remains to consider whether such right has been granted by any subsequent enactment.

The dissenting opinion in the circuit court of appeals finds such grant to have been accomplished by the Act of February 13, 1925; 43 Stat., 941; U. S. C., Title 28, Section 42.

By that act it is provided that

> "No district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or

> under an Act of Congress, provided that this section shall not apply to any suit, action or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock."

Only by repealing the provision made by the act creating them could the Act of 1925 operate to grant to the Intermediate Credit Banks the right to invoke Federal jurisdiction because of their Federal origin. Such a construction of the Act of 1925 would be in conflict with the general rules of statutory construction:

> "But the repeal of statutes by implication is not favored by the courts. The presumption is always against the intention to repeal where express terms are not used. To justify the presumption of an intention to repeal one statute by another, either the two statutes must be irreconcilable or the intent to effect a repeal must be otherwise clearly expressed. It follows that where the intention not to repeal is apparent or manifest from an act there is no room for repeal by implication or the application of rules regarding implied repeal." 36 Cyc., 1071 *et seq.*
>
> "Where two legislative acts are repugnant to or in conflict with each other the one last passed, being the latest expression of the Legislative will, must govern, although it contains no repealing clause. But it is not sufficient to establish such repeal that the subsequent law covers some or even all of the cases provided for by the prior statute since it may be merely

affirmative or cumulative or auxiliary. Between the two acts there must be plain, unavoidable and irreconcilable repugnancy and even then the old law is repealed by implication only *pro tanto* to the extent of the repugnancy. If both acts can by any reasonable construction be construed together both will be sustained." 36 Cyc., 1073 *et seq.*

The rule against repeal by implication, while always strong, is particularly strong where the earlier statute is of special import and the later statute is of general application.

Washington v. Miller, 235 U. S., 422; 35 Sup. Ct., 119; 59 L. Ed., 295.

United States v. Healy, 160 U. S., 136, 146; 16 Sup. Ct., 247; 40 L. Ed., 369.

United States v. Greathouse, 166 U. S., 601, 605; 17 Sup. Ct., 701; 41 L. Ed., 1130.

Rodgers v. United States, 185 U. S., 83, 87.

Petri v. F. E. Creelman Lumber Co., 199 U. S., 487, 497; 26 Sup. Ct., 133; 50 L. Ed., 281.

There is nothing inconsistent or contradictory or repugnant in the Act of 1923, and the Act of 1925 under consideration. The two acts could consistently be embodied in one and the same statute. Congress could logically say (in fact, has said, as the respondent contends) as follows:

> "We now annul this theory of Federal jurisdiction based solely on Federal incorporation, except that in the case of corporations of which the Government owns more than one-half the stock this annulment shall not apply and we

> shall either let the old rule remain in effect as to them or we shall make some specific provision as to jurisdiction in the statute creating each class of such corporations. Here is a class of such corporations, Intermediate Credit Banks, about which we should now determine and we hereby determine that such corporations shall not have the right to invoke Federal jurisdiction on the ground of their Federal origin, they shall take the same status as National Banks."

The petitioner seeks to sustain the jurisdiction of this Court on the *wording of the proviso* of Section 12 of the Act of 1925, *supra*. The attention of the court is directed to the fact that Section 12 is a *limitation* upon jurisdiction and not a *grant* of jurisdiction; the proviso is merely an exception to the limitation accomplished by that specific section of the code. The proviso does not become a grant of jurisdiction by restricting the operation of the limitation created by the section. A proviso to the particular limitation created by that section does not become *ipso facto* a proviso restricting all other limitations that Congress might see fit to enact.

Moreover, the wording of the proviso is clearly indicative of its intent. It reads: "Provided that this section **shall not apply** to, etc." In other words, by the very wording of the proviso, *the section does not apply to a class of corporations that embraces the plaintiff in error.* It was clearly the intention of Congress to leave the question of jurisdiction over that class of corporations either to the general law on the subject or to such specific provision as might be made by the

statute creating the corporation. The petitioner is seeking to sustain the jurisdiction on the ground that it is granted by a section of the code that states in unmistakable language that the section *does not apply* to suits by or against corporations such as the petitioner. By virtue of a section that expressly *does not apply* to the petitioner, it seeks to nullify the effect of express language in the statute creating it.

A similar situation was recently considered by this Court in the case of the *United States v. McElvain*, 47 S. Ct., 219. While the situation in that case was not exactly similar to the situation here, yet the logic of the decision is applicable to the case at bar. Here, as there, the proviso can be given no broader scope than the preceding part of the section; a section that in its body is a *limitation* should not be broadened into a *grant* of jurisdiction by a proviso, unless that construction is inescapable.

The structure of the Act of 1925 is a strong argument against its intent to repeal by implication the Act of 1923 or to supersede that act by consolidation. The Act of 1925, by Section 13, carefully enumerates a number of existing laws that it intends to repeal; the enumeration embraces nineteen named sections of the Judicial Code; also all or parts of fourteen named statutes; these specific repeal provisions being followed by a general repeal provision. Among the statutes repealed is the Act of January 28, 1915, abrogating the right to invoke Federal jurisdiction by Federally incorporated railroads. It is to be assumed that the committees of Congress who were responsible for the

drafting of the Act of 1925 embraced the same, or many of the same, individuals who were responsible for the drafting of the Act of 1923, and who must have been thoroughly familiar with the existence of the latter statute. It is most improbable that, in the careful enumeration in the Act of 1925 of statutes thereby repealed, there would have been an omission of the comparatively recent Act of 1923, if it had been the intention of Congress to repeal the latter. The very exhaustiveness and particularity of the repeal provisions of the Act of 1925 are indicative of the intention of Congress not to leave the matter of repeal to implication. The history of the committee hearings as set forth in the majority opinion in the circuit court of appeals confirms this idea.

Point IV.

The logic of the argument in support of Federal jurisdiction is fallacious.

Throughout this controversy the several positions that have been assumed by the petitioner are in brief as follows:

a. That the words "shall be deemed a citizen of the State where it is located" apply only to jurisdiction based upon diverse citizenship, and not to jurisdiction based upon the existence of a Federal question.

b. That if the foregoing be not true, then the word "jurisdiction" in the Act of 1923 should be construed as "venue".

c. That if neither of the foregoing propositions be true, then the Act of 1923 was impliedly repealed by the Act of 1925.

d. That if the foregoing be not true, then the Act of 1925 superseded or constituted a consolidation of all previous acts on the same subject.

e. That it is the wise policy to construe the Federal jurisdiction as existing, because the Government is financially interested in these corporations.

To reply to the last argument first, it is sufficient to say that it should be addressed to Congress and not to this Court.

But even if the wisdom of congressional action were open to consideration by this Court, it does not appear to be such a foolish policy for Congress to say to these banks, "You must so conduct yourselves, and so live with your neighbors, and so merit their esteem that in litigation they will give you justice in their local courts in the same manner in which National Banks find that justice." It is not inconsistent with the idea of "farm relief" that underlies the creation of these banks for Congress to give the farmers the right to conduct their litigation with these banks in their local State courts in their rural communities, without being subjected to the expense and inconvenience of going to the Federal courts in the oftentimes distant city. Every reason that applies to Intermediate Credit Banks applies with equal force to National Banks. The learned judge who dissented in the circuit court was apparently impressed with the near-

ness of these banks to the Federal Treasury, when he says "it involves the right of the Federal Government to maintain a suit in its own courts to enforce a liability in its behalf arising in a corporation chartered and owned by it," and when he says "to place billions of the public money in the hands of banking institutions." There are twelve Intermediate Credit Banks authorized (42 Stat., 1454), each having a capital of five million dollars (42 Stat., 1457), or a total amount of sixty million dollars throughout the entire United States. That falls somewhat short of "billions of the public money." Moreover, it is to be remembered that these corporations have limited liability and are incorporated for the specific purpose of engaging in commercial transactions. The fact that the United States owns a majority or all of the stock of a corporation does not constitute that corporation a branch of the Government, nor is a suit by such a corporation "maintained by the Federal Government," nor is the corporation thereby vested with the prerogatives, immunities, and attributes of sovereignty. *Sloan, etc., v. U. S. Shipping Board*, 258 U. S., 549; 42 S. Ct., 386; *United States v. McCarl*, 48 S. Ct., 12. A contrary doctrine might prove highly embarrassing, particularly if extended, as logically it must be, to commercial corporations in which a foreign government is the stockholder.

The arguments of the petitioner addressed to statutory construction are fallacious, in that each and all of them disregard the plain meaning of the words of the two statutes involved, thereby violating the first rule of statutory construction.

As to the suggestion that the wording in question is intended to apply to jurisdiction based on diverse citizenship but not to jurisdiction based on existence of a Federal question, the first answer is that the words were not so used in the statute from which Congress lifted them bodily into the Act of 1923. But a more complete answer is this: If Congress intended to leave to the banks the right to invoke Federal jurisdiction on the ground of existence of a Federal question, why should it bother to make any provision as to the invocation of that right on the ground of diverse citizenship; only one ground of entry into the Federal court is needed by a litigant; if he can get in on the ground of a Federal question, it is immaterial whether he can get in on the ground of diverse citizenship.

As to the suggestion that the word "jurisdiction" as used in the Act of 1923 should be construed in the sense of *venue*, it would seem sufficient answer to this argument to use the words of the opinion below "we must assume that Congress did not mean *venue* when it said jurisdiction." The context is not such as to require this change in meaning to coordinate this word with other parts of the act or for any other purpose. Moreover, the words used in conjunction with the word "jurisdiction," to wit, the words: "shall be deemed a citizen of the State where it is located" are words used in the Judicial Code as defining jurisdiction, and are words construed in the case of *Herrmann v. Edwards, supra*, as applying to jurisdictional limitation. Neither in the Judicial Code nor in the construction of the Code in *Herrmann v. Edwards* is there any suggestion that those words are used as applying to *venue*.

As to the suggestion that the Act of 1925 operates as a repeal, or supersedes the Act of 1923, enough has been said under Point III and does not need repetition here.

To sustain the one position of the petitioner, it is necessary that this Court shall rewrite a word in the Act of 1923, or shall construe a phrase to have a meaning different from the meaning that had judicially been conferred upon it at the time that Congress used that phrase in the act under consideration.

To sustain the other position of the petitioner, it is necessary that this Court construe a special statute as repealed by implication by a statute of general import, or as superseded by a statute that is concurrently consistent; and that it find in a proviso to a limitation upon jurisdiction, a grant of jurisdiction not theretofore existing; and that it construe as applying to this corporation a proviso that by its clear terms states that it shall not apply.

Point V.

The presumption is against the jurisdiction of the Federal court.

It has been repeatedly held that a litigant seeking to sustain the jurisdiction of the Federal court must clearly show that the jurisdiction exists and the presumption is against the jurisdiction.

Robertson v. Cease, 97 U. S., 646.
King Bridge Co. v. Otoe County, 120 U. S., 225.
Thomas v. Board of Trustees, 195 U. S., 207.

While this respondent contends that the specific intention of Congress to deny the jurisdiction in this case is clearly shown, yet even if the question were in doubt he respectfully suggests that under the foregoing cases it would become the duty of the court to indulge the presumption and decline jurisdiction of this case.

Conclusion.

Wherefore, it is respectfully urged upon the court that the decision of his Honor the District Judge is correct, that the Federal court is without jurisdiction of this action, and that the circuit court of appeals should be affirmed.

Respectfully submitted,

WILLIAM J. THOMAS,
BUIST & BUIST,
GEO. L. BUIST,
Counsel for Respondent, Charles S. Mitchell.

SUPREME COURT OF THE UNITED STATES.

No. 456.—October Term, 1927.

Federal Intermediate Credit Bank of Columbia, South Carolina, Petitioner,
vs.
Charles S. Mitchell, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[May 14, 1928.]

Mr. Justice Butler delivered the opinion of the Court.

Petitioner is a Federal Intermediate Credit Bank chartered under an Act of March 4, 1923, c. 252, 42 Stat. 1454. All its capital stock is owned by the United States. It sued in the federal court for the eastern district of South Carolina to recover more than $3,000.00 claimed on certain promissory notes. The bank is located at Columbia in that State. The defendants were citizens of the State and residents within the district. Jurisdiction was invoked on the ground that the suit is one where the matter in controversy arises under the laws of the United States. § 24(1), Judicial Code, U. S. C., Tit. 28, § 41. The district court held that it was without jurisdiction and dismissed the case. The Circuit Court of Appeals affirmed. 21 F. (2d) 51.

The judicial power of the United States extends to all cases arising under its Constitution and laws. Art. III. By § 2 of an Act of March 3, 1875, c. 137, 18 Stat. 470, which in substance was carried into the Judicial Code as § 24(1), the district courts were given jurisdiction of all suits where the matter in controversy exceeds a specified amount and arises under federal law. A suit by or against a corporation created under an Act of Congress is one arising under the laws of the United States. *Osborn* v. *United States Bank*, 9 Wheat. 738, 816. *American Bank & Trust Co.* v. *Federal Bank*, 256 U. S. 350. *Sowell* v. *Federal Reserve Bank*, 268 U. S. 449. State citizenship does not result from the mere creation of a corporation under federal law. *Bankers Trust Co.* v. *Texas &*

Pacific Ry., 241 U. S. 295, 309. Section 201(c) of the Act under which petitioner was organized provides that each such bank "for purposes of jurisdiction shall be deemed a citizen of the State where it is located." Section 12 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941, declares that no district court shall have jurisdiction of any suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: "*Provided*, That this section shall not apply to any suit . . brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock." U. S. C., Tit. 28, § 42.

The lower courts, erroneously conceiving that § 201(c) is in respect of Federal Intermediate Credit Banks the equivalent of § 24(16) of the Judicial Code applying to national banking associations, held that the former operates to take suits by or against petitioner out of the general rule, and that the proviso in the Act of February 13, 1925, does not apply to it. That conclusion resulted from a misunderstanding of the decision in *Herrmann* v. *Edwards*, 238 U. S. 107. That was a suit brought in the United States court by a stockholder of a national bank against its directors to compel them to reimburse the bank for funds wrongfully diverted. It was a controversy arising under the laws of the United States within the meaning of § 24(1); and if that provision stood alone, the district court would have had jurisdiction. But § 4 of the Act of July 12, 1882, c. 290, 22 Stat. 162, 163, declared that jurisdiction of such suits, except those between a bank and the United States or its officers and agents, "shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun." Section 4 of the Act of March 3, 1887, c. 373, 24 Stat. 552, 554, (reenacted August 13, 1888, 25 Stat. 433, 436) provided that national banking associations should for the purposes of all actions by or against them "be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State"; and it declared that the provisions of the section should not affect jurisdiction of federal courts

in cases commenced by the United States or by direction of an officer thereof or in cases for winding up such banks. Section 24(16) of the Judicial Code gives district courts original jurisdiction of all cases commenced by the United States or by direction of any officer thereof against any national banking association and of cases for winding up any such bank, and of all suits brought by any banking association to enjoin the Comptroller of the Currency or any receiver acting under his direction. And it provides that all such banking associations "shall for the purposes of all other actions by or against them . . . be deemed citizens of the States in which they are respectively located." This court held that, as to suits not within the specified exceptions, national banks were by the Acts of 1882 and 1887 put on the same basis in respect of jurisdiction as if they had not been organized under an Act of Congress, and that as to such suits federal incorporation was not a ground for jurisdiction. That conclusion rests upon the direct and affirmative expression of these Acts. And the decision makes it plain that while § 24(16) adopted a different form of expression, it was in substance a reenactment of the earlier provisions in respect of such jurisdiction. The provisions of the Judicial Code are to be construed as continuations of existing statutes, and no change of intent is to be implied unless clearly made manifest. § 294, Judicial Code. The Judicial Code did not restore jurisdiction that the Acts of 1882 and 1887 had taken away.

The state citizenship granted by § 201(c) governs the places where suit may be brought against such banks. § 51, Judicial Code, U. S. C.,Tit. 28, § 112. Cf. *Shaw* v. *Quincy Mining Company*, 145 U. S. 444. *In re Keasbey & Mattison Company*, 160 U. S. 221, 229. *Matter of Dunn*, 212 U. S. 374, 388. But it is in nowise inconsistent with the general rule that district courts have jurisdiction of suits brought by or against corporations organized under an Act of Congress on the ground that they are controversies arising under federal law. It is firmly established that, in the absence of enactments plainly expressing that purpose, Congress will not be held to have intended to restrict that jurisdiction. *Herrmann* v. *Edwards*, *supra*, 118. *Bankers Trust Co.* v. *Texas & Pacific Ry.*, *supra*, 303. That Congress is accustomed to use direct and unmistakable language to effect such important changes in the law is well illustrated by the Acts of 1882 and 1887; by § 5 of the Act of

January 28, 1915, c. 22, 38 Stat. 803, 804, providing that no court of the United States shall have jurisdiction of any suit by or against any railroad company upon the ground that such company was incorporated under an Act of Congress, and by § 12 of the Act of February 13, 1925. The Government owns all the capital stock of petitioner and suits by or against it are plainly within the reasons which prompted the enactment of the proviso in § 12. There is no warrant for an inference that by § 201(c) Congress intended to take suits by or against Federal Intermediate Credit Banks out of the general rule.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.